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DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

7 CFR Part 3430

RIN 0524–AA28

Competitive and Noncompetitive Non-formula Grant Programs—General Grant Administrative Provisions and Program-Specific Administrative Provisions for the Specialty Crop Research Initiative

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Interim Rule and request for comments.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) is publishing one set of administrative requirements that contain elements common to all of the competitive and noncompetitive non-formula grant programs the Agency administers as an interim rule. Although this interim rule becomes effective on the date of publication, CSREES is requesting comments for a 60-day period as identified below. In a relatively short period of time, this will allow CSREES to apply basic rules to grant programs that are currently operating without them, including new non-formula grant programs created by the passage of the Food, Conservation, and Energy Act of 2008 (FCEA) (Pub. L. 110–234) and to efficiently implement changes to programs with existing regulations as required by FCEA. The provisions in subparts A through E will serve as a single Agency resource codifying current practices simply and coherently for almost all CSREES competitive and noncompetitive non-formula grant programs except the Small Business Innovation Research (SBIR) Program. As specific rules are developed for each CSREES grant program, CSREES will propose adding a subpart for that Federal assistance program to this regulation. This interim rule is being published with a first set of program-specific grant regulations as subpart F for the Specialty Research Crop Initiative, authorized under section 7311 of FCEA.

DATES: This interim rule is effective August 1, 2008. The Agency must receive comments on or before September 30, 2008.

ADDRESSES: You may submit comments, identified by RIN 0524–AA28, by any of the following methods:

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

E-mail: RFP-OEP@reeusda.gov. Include Regulatory Information Number (RIN) number 0524–AA28 in the subject line of the message.

Fax: 202–401–7752.

Mail: Paper, disk or CD–ROM submissions should be submitted to Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2299, 1400 Independence Avenue, SW., Washington, DC 20250–2299.

Hand Delivery/Courier: Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, Room 2258, Waterfront Centre, 800 9th Street, SW., Washington, DC 20024.

Instructions: All submissions received must include the agency name and the RIN for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Erin Daly, Policy Section Leader, Office of Extramural Programs, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2299, 1400 Independence Avenue, SW., Washington, DC 20250–2299; Voice: 202–401–3319; Fax: 202–401–7752; E-mail: *edaly@csrees.usda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background and Summary

Authority

This rulemaking is authorized by section 1470 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA), as amended, Public Law 95–113 (7 U.S.C. 3101 *et seq.*). It furthers the streamlining and standardization efforts initiated by the Federal Financial Assistance Management Improvement Act of 1999, Public Law 106–107 (31 U.S.C. 6101 note) which sunset in November 2007, and is in accordance with the efforts of CSREES and the U.S. Department of Agriculture (USDA) to streamline and simplify the entire grants process while meeting the ever-increasing accountability and transparency standards.

Context

CSREES has published administrative provisions specific to some of the non-formula grant programs it administers. These provisions appear in Parts 3400, Special Research Grants Program; 3401, Rangeland Research Grants Program; 3402, Food and Agricultural Sciences National Needs Graduate and Postgraduate Fellowship Grants Program; 3405, Higher Education Challenge Grants Program; 3406, 1890 Institution Capacity Building Grants Program; 3411, National Research Initiative Competitive Grants Program; and 3415, Biotechnology Risk Assessment Research Grants Program of 7 CFR. This interim rule will not apply to the Small Business Research Innovation (SBIR) Program with implementing regulations codified at 7 CFR 3403. Where the interim administrative provisions conflict with existing regulations for CSREES administered non-formula grant programs, the existing regulations (*i.e.*, 7 CFR parts 3400 through 3402, 3405, 3406, 3411, and 3415) for these programs will supersede until the regulation is cancelled or the subpart for that specific program is promulgated under this part.

Purpose

A primary function of CSREES is the fair, effective, and efficient administration of Federal assistance programs implementing agricultural research, education, and extension programs. The Agency's development and publication of regulations for its non-formula grant programs enhance its accountability and standardize procedures across the grant programs it administers while providing transparency to the public. More than

thirty grant programs administered by CSREES are not currently governed by administrative provisions; and CSREES' existing administrative provisions fail to take advantage of basic similarities between non-formula grant programs and the Federal government-wide efforts to standardize and streamline the entire grant process from pre-award through closeout and post-award. The cumulative effect is duplicative, confusing language, contrary to the needs and demands of applicants and grantees for consistent and clear grant policies and procedures.

This rulemaking attempts to solve the problem by addressing the elements common to all of the competitive and noncompetitive grant programs CSREES administers. In this way, the Agency can apply basic rules to grant programs that are currently operating without them as well as quickly implement regulations for any new program. In addition, this rule will serve as a single resource, except for the SBIR and formula grant programs, that codifies current processes simply and coherently.

This interim rule will allow CSREES to finally document and codify the grant policies and business practices it sought to standardize and streamline in concert with other Federal grant-making agencies in response to various laws (including Pub. L. 106–107), regulations, and Presidential, Departmental, and Agency directives and initiatives. As of fiscal year 2008, CSREES publishes program solicitations or Requests For Applications (RFAs) in an Agency-wide template (incorporating the Federal government-wide requirements and standards) on the Grants.gov web site; accepts all applications (using the SF–424 form families) via Grants.gov; requires all competitive and noncompetitive non-formula programs to submit all progress and final technical reports via the Current Research Information System (CRIS); and as of July 1, 2008, implemented a more comprehensive and updated set of award terms and conditions that are consistent with other Federal grant-making agencies, yet address the unique needs of CSREES programs and USDA and CSREES business practices. These interim rules also address various issues related to audit findings and recommendations from the USDA Office of Inspector General (*e.g.*, timely closeout of expired awards and restriction of grant funds 90 days after the expiration date). In response to Office of Management and Budget (OMB) Circular A–123 on Internal Controls, Improper Payment Information Act (IPIA), and other oversight and monitoring requirements, CSREES is seeking to clearly establish and implement monitoring and oversight procedures and systems to ensure that Federal assistance funds are being efficiently and effectively expended in accordance with program authorities and Federal assistance laws and regulations.

Alternatives

CSREES considered publishing separate rules for each uncovered grant program. However, this would defeat the purposes of recent laws, regulations, and Presidential, Departmental, and Agency initiatives to standardize and streamline the entire grant cycle. Furthermore, it would be a time consuming practice to draft and publish a final rule for each uncovered program. On the other hand, this interim rule provides clearer, more consistent and effective grant policies and procedures for the grantee which will contribute to more efficient and effective program delivery and potentially result in less audit findings and disallowed costs. The Agency expects this interim rule to contribute and facilitate more consistent processes across grant programs within CSREES and across USDA and the Federal government. By making better use of standard administrative provisions, CSREES also anticipates being able to publish clearer and more consistent RFAs within a shorter time frame and provide applicants, grantees, staff, and the public with one comprehensive set of administrative provisions.

Compliance

Once implemented, applicants who fail to comply with the new administrative provisions may not have their applications considered for funding by CSREES, may have their grant suspended or terminated, or may be billed for disallowed costs. This penalty provision can be enforced and is critical to CSREES' fair, effective, and efficient administration of grant programs. It is anticipated that having one set of administrative provisions codified in one part will assist applicants and grantees in understanding and complying with Federal assistance laws and regulations, as well as the intent of the authorizing regulation.

Organization

CSREES organized the regulation as follows: Subparts A through E provide administrative provisions for all competitive and noncompetitive non-formula grants. Subparts F and thereafter apply to specific CSREES programs and are organized in the following groups: Research programs (*i.e.*, programs with a predominantly research focus), education and multicultural programs, extension programs, integrated programs (*i.e.*, programs that statutorily require the integration of two or more components—research, education, or extension); and other programs. See section 3430.2 below for definitions (*e.g.*, research, extension, and education).

CSREES is, to the extent practical, using the following subpart template for each program authority: (1) Applicability of regulations, (2) purpose, (3) eligibility, (4) definitions (those in addition to or different from 3430.2), (5) project types and priorities, (6) funding restrictions (including indirect costs), and (7) matching requirements. Subparts F and thereafter contain the above seven components in this order. Additional sections may be added for a specific program if there are additional requirements or a need for additional rules for the program (*e.g.*, additional reporting requirements).

Subpart F—Specialty Crop Research Initiative

As stated above, this interim rulemaking includes the program-specific rules as subpart F for the Specialty Crop Research Initiative (SRCI) which is authorized under section 7311 of FCEA.

Through this program-specific regulation under subpart F, § 3430.202, CSREES is defining ''integrated'' and ''specialty crop.'' Subpart F also provides that individual applicants must be U.S. citizens or a national of the United States and excludes foreign or international organizations. Section 3430.204 provides that CSREES can develop and implement new activities and focus areas not identified in 3430.201 based on input provided by stakeholders and as determined by CSREES. Section 3430.205 states the specific program restrictions and clarifies the indirect cost policy for the SCRI Program. Section 3430.206 states the specific matching requirements for this program and that these matching requirements cannot be waived.

Timeline for Implementing Regulations

CSREES is publishing this rule as interim with a 60-day comment period and anticipates a final rule by March 1, 2009. However, in the interim, these regulations apply to all CSREES competitive and noncompetitive non-formula programs (except for the programs implemented by 7 CFR Part 3400, Special Research Grants Program; 7 CFR Part 3401, Rangeland Research

Grants Program; 7 CFR Part 3402, Food and Agricultural Sciences National Needs Graduate and Postgraduate Fellowship Grants Program; 7 CFR Part 3405, Higher Education Challenge Grants Program; 7 CFR Part 3406, 1890 Institution Capacity Building Grants Program; 7 CFR Part 3411, National Research Initiative Competitive Grants Program; and 7 CFR Part 3415, Biotechnology Risk Assessment Research Grants Program) until the regulations for these programs (*i.e.*, the individual subparts) are in effect or superseded by statute). As stated previously, this regulation will not apply to 7 CFR Part 3403, Small Business Innovation Research Grants Program. Within the next 18 months, CSREES plans to cancel some of the existing program-specific regulations identified in 7 CFR and incorporate these program-specific regulations as separate subparts under this part. In addition, CSREES is currently drafting a CSREES Grants Policy Manual, which while incorporating the regulations under this part, will provide more specific instructions, detailed explanations, and background for potential applicants, grantees, Agency and Departmental staff, and the public.

II. Administrative Requirements for the Proposed Rulemaking

Executive Order 12866

This action has been determined not significant for purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget. This interim rule will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs; nor will it have an annual effect on the economy of $100 million or more; nor will it adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way. Furthermore, it does not raise a novel legal or policy issue arising out of legal mandates, the President's priorities or principles set forth in the Executive Order.

Regulatory Flexibility Act of 1980

This interim rule has been reviewed in accordance with the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601–612. The Department concluded that the rule does not involve regulatory and informational requirements regarding businesses, organizations, and governmental jurisdictions subject to regulation.

Paperwork Reduction Act (PRA)

The Department certifies that this interim rule has been assessed in accordance with the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* (PRA). The Department concludes that this interim rule does not impose any new information requirements; however, the burden estimates will increase for existing approved information collections associated with this rule due to additional applicants. These estimates will be provided to OMB. In addition to the SF–424 form families (i.e., Research and Related and Mandatory), SF–272, Federal Cash Transactions Report, and SF–269, Financial Status Reports; CSREES has three currently approved OMB information collections associated with this rulemaking: OMB Information Collection No. 0524–0042, CSREES Current Research Information System (CRIS); No. 0524–0041, CSREES Application Review Process; and No. 0524–0026, Assurance of Compliance with the Department of Agriculture Regulations Assuring Civil Rights Compliance and Organizational Information.

Catalog of Federal Domestic Assistance

This interim regulation applies to the following Federal assistance programs administered by CSREES including 10.309, Specialty Crop Research Initiative.

The National Environmental Policy Act of 1969

The Department certifies this interim rule has been assessed in accordance with the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* (NEPA). The Department concludes that the NEPA requirements do not apply to this rulemaking because this interim rule includes no provisions impacting the maintenance, preservation or enhancement of a healthful environment.

Federal Regulations and Policies on Families

The Department has reviewed this interim rule in accordance with the requirements of section 654 of the Treasury and general Government Appropriations Act of 1999, 5 U.S.C. 601 note. This interim regulation was not found to have a potential negative effect on family well-being as it is defined thereunder.

Executive Order 13045: Protection of Children From Environmental and Safety Risk

The Department certifies that this interim rule has been assessed regarding the environmental health risks and safety risks that may disproportionately affect children. This interim regulation was not found to have a negative affect on the health and safety of children.

Unfunded Mandates Reform Act of 1995 and Executive Order 13132

The Department has reviewed this interim rule in accordance with the requirements of Executive Order No. 13132, 64 FR 43225 (August 10, 1999) and the Unfunded Mandates Act of 1995, 2 U.S.C. 1501 *et seq.*, and has found no potential or substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. As there is no Federal mandate contained herein that could result in increased expenditures by State, local tribal governments or by the private sector, the department has not prepared a budgetary impact statement.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

The Department has reviewed this interim rule in accordance with Executive Order 13175, 65 FR 67249 (Nov. 9, 2000), and has determined that it does not have ''tribal implications.'' The interim rule does not ''have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights

The Department has reviewed this interim rule in accordance with Executive Order 12630, 53 FR 8859 (Mar. 15, 1988) and has determined that it does not contain any ''policies that have takings implications in regard to the licensing, permitting, or other condition requirements or limitations on private property use, or that require dedications or exactions from owners of private property.''

Executive Order 13211: Energy Supply, Distribution, or Use

The Department has reviewed this interim regulation and has determined that the provisions of Executive Order

13211, 66 FR 28355 (May 18, 2001), are not applicable as this is not a significant regulatory action and there are no direct or implied effects on energy supply, distribution, or use.

Clarity of This Regulation

Executive Order 12866, 58 FR 51735 (September 30, 1993), and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. The Department invites comments on how to make this interim rule easier to understand.

List of Subjects in 7 CFR Part 3430

Administrative practice and procedure, Agricultural research, Education, Extension, Federal assistance.

■ For the reasons discussed in the preamble, the Cooperative State Research, Education, and Extension Service is amending chapter XXXIV of title 7 of the Code of Federal Regulations to add part 3430 to read as follows:

PART 3430—COMPETITIVE AND NONCOMPETITIVE NON-FORMULA GRANT PROGRAMS—GENERAL GRANT ADMINISTRATION PROVISIONS

Subpart A—General Information

Sec.
3430.1 Applicability of regulations.
3430.2 Definitions.
3430.3 Deviations.
3430.4 Other applicable statutes and regulations.

Subpart B—Pre-Award: Solicitation and Application

3430.11 Competition.
3430.12 Requests for applications.
3430.13 Letter of intent to submit an application.
3430.14 Types of applications; types of grants instruments.
3430.15 Stakeholder input.
3430.16 Eligibility requirements.
3430.17 Content of an application.
3430.18 Submission of an application.
3430.19 Resubmission of an application.
3430.20 Acknowledgment of an application.
3430.21 Confidentiality of applications and awards.

Subpart C—Pre-Award: Application Review and Evaluation

3430.31 Guiding principles.
3430.32 Preliminary application review.
3430.33 Selection of reviewers.
3430.34 Evaluation criteria.
3430.35 Review of noncompetitive applications.
3430.36 Procedures to minimize or eliminate duplication of effort.
3430.37 Feedback to applicants.

Subpart D—Award

3430.41 Administration.

Subpart E—Post-Award and Closeout

3430.51 Payment.
3430.52 Cost sharing and matching.
3430.53 Program income.
3430.54 Technical reporting.
3430.55 Financial reporting.
3430.56 Project meetings.
3430.57 Hearings and appeals.
3430.58 Closeout procedures.

Research Programs

Subpart F—Specialty Crop Research Initiative

3430.200 Applicability of regulations.
3430.201 Purpose.
3430.202 Definitions.
3430.203 Eligibility.
3430.204 Project types and priorities.
3430.205 Funding restrictions.
3430.206 Matching requirements.

Authority: 7 U.S.C. 3316; Pub. L. 106–107 (31 U.S.C. 6101 note)

Subpart A—General Information

§ 3430.1 Applicability of regulations.

(a) This part provides agency specific regulations regarding the application for, evaluation, award, and post-award administration of Cooperative State Research, Education, and Extension Service (CSREES) awards, and are supplementary to the uniform assistance regulations at 7 CFR parts 3016 (State, local, and tribal governments), 3019 (institutions of higher education, hospitals, and nonprofits), and 3015 (all others), as applicable.

(b) *Competitive programs.* This part applies to all agricultural research, education, and extension competitive and related programs for which the Cooperative State Research, Education, and Extension Service (CSREES) has administrative or other authority, as well as any other Federal assistance program delegated to the CSREES administrator. In cases where regulations of this part conflict with existing regulations of CSREES in title 7 (i.e., 7 CFR parts 3400 through 3499) of the Code of Federal Regulations, regulations of this part shall supersede. This part does not apply to the Small Business Innovation Research (SBIR) Program.

(c) *Noncompetitive programs.* Subparts A, B, D, and E of this part, as well as § 3430.35, apply to all noncompetitive agricultural research, education, and extension programs administered by CSREES, as well as any other Federal assistance program delegated to the CSREES administrator.

(d) *Grant programs administered on behalf of other agencies.* Subparts A through E of this part, as appropriate, apply to competitive and noncompetitive grants administered on behalf of other agencies of the Federal government. Requirements specific to these grant programs will be included in the program solicitations or RFAs.

(e) *Grant programs administered jointly with other agencies.* Subparts A through E of this part, as appropriate, apply to competitive and noncompetitive grants administered jointly with other agencies of the Federal government. Requirements specific to these grant programs will be included in the appropriate program solicitations or RFAs published by both or either agency.

(f) *Formula fund grants programs.* This part does not apply to any of the formula grant programs administered by CSREES. Formula funds are the research funds provided to 1862 land-grant institutions and agricultural experiment stations under the Hatch Act of 1887 (7 U.S.C. 361a, *et seq.*); extension funds provided to 1862 land-grant institutions under sections 3(b) and 3(c)) of the Smith-Lever Act (7 U.S.C. 343(b) and (c)) and section 208(c) of the District of Columbia Public Postsecondary Education Reorganization Act, Public Law 93–471; agricultural extension and research funds provided to 1890 land-grant institutions under sections 1444 and 1445 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA) (7 U.S.C. 3221 and 3222); expanded food and nutrition education program funds authorized under section 3(d) of the Smith-Lever Act to the 1862 land-grant institutions and the 1890 land-grant institutions; extension funds under the Renewable Resources Extension Act for the 1862 land-grant institutions and the 1890 land-grant institutions; research funds provided to forestry schools under the McIntire-Stennis Cooperative Forestry Research Act of 1962 (16 U.S.C. 582a, *et seq.*); and animal health and disease research funds provided to veterinary schools and agricultural experiment stations under section 1433 of NARETPA (7 U.S.C. 3195).

§ 3430.2 Definitions.

As used in this part:

1862 Land-Grant Institution means an institution eligible to receive funds under the Act of July 2, 1862, as amended (7 U.S.C. 301 *et seq.*). Unless otherwise stated for a specific program, this term includes a research foundation maintained by such an institution.

1890 Land-Grant Institution means one of those institutions eligible to receive funds under the Act of August 30, 1890, as amended (7 U.S.C. 321 *et seq.*), including Tuskegee University and West Virginia State University.

Unless otherwise stated for a specific program, this term includes a research foundation maintained by such an institution.

1994 Land-Grant Institution means one of those institutions as defined in section 532 of the Equity in Educational Land-Grant Status Act of 1994, as amended (7 U.S.C. 301 note). These institutions are commonly referred to as Tribal Colleges or Universities.

Administrator means the Administrator of the Cooperative State Research, Education, and Extension Service (CSREES) and any other officer or employee of the CSREES to whom the authority involved is delegated.

Advisory Board means the National Agricultural Research, Extension, Education, and Economics Advisory Board.

Agricultural research means research in the food and agricultural sciences.

Applied research means research that includes expansion of the findings of fundamental research to uncover practical ways in which new knowledge can be advanced to benefit individuals and society.

Authorized Departmental Officer or *ADO* means the Secretary or any employee of the Department with delegated authority to issue or modify grant instruments on behalf of the Secretary.

Authorized Representative or *AR* means the President or Chief Executive Officer of the applicant organization or the official, designated by the President or Chief Executive Officer of the applicant organization, who has the authority to commit the resources of the organization to the project.

Budget period means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

Cash contributions means the recipient's cash outlay, including the outlay of money contributed to the recipient by non-Federal third parties.

Citizen or *national of the United States* means a citizen or native resident of a State; or, a person defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a)(22), who, though not a citizen of the United States, owes permanent allegiance to the United States. When eligibility is claimed solely on the basis of permanent allegiance, documentary evidence from the Immigration and Naturalization Service as to such eligibility must be made available to CSREES upon request.

College or *university* means, unless defined in a separate subpart, an educational institution in any State which:

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which a bachelor's degree or any other higher degree is awarded;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association. Unless otherwise stated for a specific program, this term includes a research foundation maintained by such an institution.

Department means the United States Department of Agriculture.

Education activity or *teaching activity* means formal classroom instruction, laboratory instruction, and practicum experience in the food and agricultural sciences and other related matters such as faculty development, student recruitment and services, curriculum development, instructional materials and equipment, and innovative teaching methodologies.

Established and demonstrated capacity means that an organization has met the following criteria:

(1) Conducts any systematic study directed toward new or fuller knowledge and understanding of the subject studied; or,

(2) Systematically relates or applies the findings of research or scientific experimentation to the application of new approaches to problem solving, technologies, or management practices; and

(3) Has facilities, qualified personnel, independent funding, and prior projects and accomplishments in research or technology transfer.

Extension means informal education program conducted in the States in cooperation with the Unites States Department of Agriculture.

Extension activity means an act or process that delivers science-based knowledge and informal educational programs to people, enabling them to make practical decisions.

Food and agricultural sciences. The term ''food and agricultural sciences'' means basic, applied, and developmental research, extension, and teaching activities in food and fiber, agricultural, renewable natural resources, forestry, and physical and social sciences, including activities relating to the following:

(1) Animal health, production, and well-being.

(2) Plant health and production.

(3) Animal and plant germ plasm collection and preservation.

(4) Aquaculture.

(5) Food safety.

(6) Soil and water conservation and improvement.

(7) Forestry, horticulture, and range management.

(8) Nutritional sciences and promotion.

(9) Farm enhancement, including financial management, input efficiency, and profitability.

(10) Home economics.

(11) Rural human ecology.

(12) Youth development and agricultural education, including 4–H clubs.

(13) Expansion of domestic and international markets for agricultural commodities and products, including agricultural trade barrier identification and analysis.

(14) Information management and technology transfer related to agriculture.

(15) Biotechnology related to agriculture.

(16) The processing, distributing, marketing, and utilization of food and agricultural products.

Fundamental research means research that increases knowledge or understanding of the fundamental aspects of phenomena and has the potential for broad application, and has an effect on agriculture, food, nutrition, or the environment.

Graduate degree means a Master's or doctoral degree.

Grant means the award by the Authorized Departmental Officer of funds to an eligible grantee to assist in meeting the costs of conducting for the benefit of the public, an identified project which is intended and designed to accomplish the purpose of the program as identified in the program solicitation or RFA.

Grantee means the organization designated in the grant award document as the responsible legal entity to which a grant is awarded.

Insular area means the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, and the Virgin Islands of the United States.

Integrated means to incorporate two or three components of the agricultural knowledge system (research, education, and extension) around a problem area or activity.

Land-grant Institutions means the 1862 Land-Grant Institutions, 1890 Land-Grant Institutions, and 1994 Land-Grant Institutions.

Matching or cost sharing means that portion of allowable project or program costs not borne by the Federal Government, including the value of in-kind contributions.

Merit review means an evaluation of a proposed project or elements of a proposed program whereby the technical quality and relevance to regional or national goals are assessed.

Merit reviewers means peers and other individuals with expertise appropriate to conduct merit review of a proposed project.

Methodology means the project approach to be followed.

Mission-linked research means research on specifically identified agricultural problems which, through a continuum of efforts, provides information and technology that may be transferred to users and may relate to a product, practice, or process.

National laboratories include Federal laboratories that are government-owned contractor-operated or government-owned government-operated.

Peer reviewers means experts or consultants qualified by training and experience to give expert advice on the scientific and technical merit of grant applications or the relevance of those applications to one or more of the application evaluation criteria. Peer reviewers may be adhoc or convened as a panel.

Prior approval means written approval by an Authorized Departmental Officer evidencing prior consent.

Private research organization means any non-governmental corporation, partnership, proprietorship, trust, or other organization.

Private sector means all non-public entities, including for-profit and nonprofit commercial and non-commercial entities, and including private or independent educational associations.

Program Officer means a CSREES individual who is responsible for the technical oversight of the award on behalf of USDA.

Project means the particular activity within the scope of the program supported by a grant award.

Project Director or *PD* means the single individual designated by the grantee in the grant application and approved by the Authorized Departmental Officer who is responsible for the direction and management of the project, also known as a Principal Investigator (PI) for research activities.

Project period means the total length of time, as stated in the award document and modifications thereto, if any, during which Federal sponsorship begins and ends.

Research means any systematic study directed toward new or fuller knowledge and understanding of the subject studied.

Scientific peer review is an evaluation of the technical quality of a proposed project and its relevance to regional or national goals, performed by experts with the scientific knowledge and technical skills to conduct the proposed research work.

Secretary means the Secretary of Agriculture and any other officer or employee of the Department to whom the authority involved is delegated.

State means any one of the fifty States, the District of Columbia, and the insular areas.

Third party in-kind contributions means the value of non-cash contributions of property or services provided by non-Federal third parties, including real property, equipment, supplies and other expendable property, directly benefiting and specifically identifiable to a funded project or program.

United States means the several States, the District of Columbia, and the insular areas.

Units of State government means all State institutions, including the formal divisions of State government (i.e., the official state agencies such as departments of transportation and education), local government agencies (e.g., a county human services office), and including state educational institutions (e.g., public colleges and universities).

§ 3430.3 Deviations.

Any request by the applicant or grantee for a waiver or deviation from any provision of this part shall be submitted to the ADO identified in the agency specific requirements. CSREES shall review the request and notify the applicant/grantee whether the request to deviate has been approved within 30 calendar days from the date of receipt of the deviation request. If the deviation request is still under consideration at the end of 30 calendar days, CSREES shall inform the applicant/grantee in writing of the date when the applicant/grantee may expect the decision.

§ 3430.4 Other applicable statutes and regulations.

Several Federal statutes and regulations apply to grant applications considered for review and to project grants awarded under CSREES grant programs. These include, but are not limited to:

7 CFR Part 1, subpart A—USDA implementation of the Freedom of Information Act.

7 CFR Part 3—USDA implementation of OMB Circular No. A–129, regarding debt management.

7 CFR Part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR Part 331 and 9 CFR Part 121—USDA implementation of the Agricultural Bioterrorism Protection Act of 2002.

7 CFR Part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (*i.e.*, OMB Circular Nos. A–21 and A–122, now codified at 2 CFR Parts 220) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224), as well as general policy requirements applicable to grantees of Departmental financial assistance.

7 CFR Part 3017—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug Free Workplace (Grants).

7 CFR Part 3018—USDA implementation of Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on grantees of Federal contracts, grants, cooperative agreements, and loans.

7 CFR Part 3019—USDA implementation of OMB Circular No. A–110, Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR Part 3052—USDA implementation of OMB Circular No. A–133, Audits of States, Local Governments, and Nonprofit Organizations.

7 CFR Part 3407—CSREES procedures to implement the National Environmental Policy Act of 1969, as amended. 29 U.S.C. 794 (section 504, Rehabilitation Act of 1973) and

7 CFR Part 15b (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR Part 401).

Subpart B—Pre-Award: Solicitation and Application

§ 3430.11 Competition.

(a) *Standards for competition.* Except as provided in paragraph (b) of this section, CSREES will enter into grants and cooperative agreements, unless restricted by statute, only after competition.

(b) The CSREES ADO and the Agency approving official may make a determination in writing that competition is not deemed appropriate for a particular transaction. Such

determination shall be limited to transactions where it can be adequately justified that a noncompetitive award is in the best interest of the Federal government and necessary to the goals of the program.

§ 3430.12 Requests for applications.

(a) For each competitive and noncompetitive non-formula program, CSREES will prepare a program solicitation (also called a request for applications (RFA); hereafter referred to as RFA in accordance with the OMB policy directive, 68 FR 37370–37379 (June 23, 2003), establishing a standard format for Federal agency announcements (*i.e.*, program solicitations or RFAs) of funding opportunities under programs that award discretionary grants or cooperative agreements. This policy directive requires the content of the RFA to be organized in a sequential manner beginning with overview information followed by the full text of the announcement and will apply unless superseded by statute or another OMB policy directive. The RFA may include all or a portion of the following items:

(1) Contact information;

(2) Directions for interested beneficiaries to submit written comments in a published program solicitation or RFA;

(3) CFDA number;

(4) Legislative authority and background information;

(5) Purpose, priorities, and fund availability;

(6) Program-specific eligibility requirements;

(7) Program-specific restrictions on the use of funds, if applicable;

(8) Matching requirements, if applicable;

(9) Acceptable types of applications;

(10) Types of projects to be given priority consideration, including maximum anticipated awards and maximum project lengths, if applicable;

(11) Program areas, if applicable;

(12) Funding restrictions, if applicable;

(13) Directions for obtaining additional requests for applications and application forms;

(14) Information about how to obtain application forms and the instructions for completing such forms;

(15) Instructions and requirements for submitting applications, including submission deadline(s);

(16) Explanation of the application revaluation process; and

(17) Specific evaluation criteria used in the review process.

(b) Where program-specific requirements differ from the requirements established in this part, program solicitations will also address any such variation(s). Variations may occur in the following:

(1) Award management guidelines;

(2) Restrictions on the delegation of fiscal responsibility;

(3) Required approval for changes to project plans;

(4) Expected program outputs and reporting requirements, if applicable;

(5) Applicable Federal statutes and regulations;

(6) Confidential aspects of applications and awards, if applicable;

(7) Regulatory information; and

(8) Definitions.

§ 3430.13 Letter of intent to submit an application.

CSREES may request or require that prospective applicants notify program staff of their intent to submit an application identified as ''letter of intent''. If applicable, the request or requirement will be included in the RFA, along with directions for the preparation and submission of the letter of intent and any relevant deadlines. Entities interested in submitting an application for a CSREES grant should complete and submit a ''Letter of Intent to Submit an Application'' form by the due date specified in the RFA. This form does not obligate the applicant in any way, but will provide useful information to CSREES in preparing for application review. Applicants that do not submit a letter of intent by the specified due date are still allowed to submit a grant application by the application due date specified in the RFA, unless otherwise specified in the RFA.

§ 3430.14 Types of applications; types of grant instruments.

(a) *Types of applications.* The type of application acceptable may vary by funding opportunity. The RFA will stipulate the type of application that may be submitted to CSREES in response to the funding opportunity. Applicants may submit the following types of applications as specified in the RFA.

(1) *New.* An application that is being submitted to CSREES for the first time.

(2) *Resubmission.* This is a project application that had been submitted for consideration under the same program previously but has not been approved for an award under the program. For competitive programs, this type of application is evaluated, in competition with other pending applications in the area to which it is assigned. Resubmissions are reviewed according to the same evaluation criteria as new applications. In addition, applicants must respond to previous panel review summary, unless waived by CSREES.

(3) *Renewal.* An application requesting additional funding for a period subsequent to that provided by a current award. A renewal application competes with all other applications and must be developed as fully as though the applicant is applying for the first time. Renewal applicants also must have filed a progress report via CRIS, unless waived by CSREES.

(4) *Continuation.* A noncompeting application for an additional funding/budget period within a previously approved project period.

(5) *Revision.* An application that proposes a change in the Federal Government's financial obligations or contingent liability from an existing obligation; or, any other change in the terms and conditions of the existing award.

(6) *Resubmitted renewal.* This is a project application that has been submitted for consideration under the same program previously. This type of application has also been submitted for renewal under the same program but was not approved. For competitive programs, this type of application is evaluated, in competition with other pending applications in the area to which it is assigned. Resubmitted renewal applications are reviewed according to the same evaluation criteria as new applications. Applicants must respond to previous panel review summary and file a progress report via CRIS, unless waived by CSREES.

(b) *Types of grant instruments.* The following is a list of corresponding categories of grant instruments issued by CSREES.

(1) *Standard.* This is a grant instrument by which the CSREES agrees to support a specified level of effort for a predetermined project period without the announced intention of providing additional support at a future date.

(2) *Renewal.* This is an instrument by which the CSREES agrees to provide additional funding under a standard grant as specified in paragraph (b)(1) of this section for a project period beyond that approved in an original or amended award, provided that the cumulative period does not exceed any statutory time limitation of the award.

(3) *Continuation.* This is a grant instrument by which the CSREES agrees to support a specified level of effort for a predetermined period of time with a statement of intention to provide additional support at a future date, provided that performance has been satisfactory, appropriations are available for this purpose, and continued support

would be in the best interest of the Federal government and the public.

(4) *Supplemental*. This is an instrument by which the CSREES agrees to provide small amounts of additional funding under a standard, renewal, or continuation grant as specified in paragraphs (b)(1), (b)(2), and (b)(3) of this section and may involve a short-term (usually six months or less) extension of the project period beyond that approved in an original or amended award, but in no case may the cumulative period of the project, including short term extensions, exceed any statutory time limitation of the award.

(c) Obligation of the Federal government. Neither the acceptance of any application nor the award of any project grant shall commit or obligate the United States in any way to make any renewal, supplemental, continuation or other award with respect to any approved application or portion of an approved application.

§ 3430.15 Stakeholder input.

Section 103 (c)(2) of the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA) (7 U.S.C. 7613(c)(2)) requires the Secretary to solicit and consider input on each program RFA from persons who conduct agricultural research, education, and extension for use in formulating future RFAs for competitive programs. CSREES will provide instructions for submission of stakeholder input in the RFA. CSREES will consider any comments received within the specified timeframe in the development of the future RFAs for the program.

§ 3430.16 Eligibility requirements.

Program-specific eligibility requirements appear in the subpart applicable to each program and in the RFAs. In addition to program-specific eligibility requirements, grants will be awarded only to responsible applicants. Specific management information relating to an applicant shall be submitted on a one-time basis, with updates on an as-needed basis, as part of the responsibility determination prior to award of a grant identified under a specific CSREES program, if such information has not been provided previously under this or another CSREES program. CSREES will provide copies of forms recommended for use in fulfilling these requirements as part of the preaward process. Although an applicant may be eligible based on its status as one of these entities, there are factors which may exclude an applicant from receiving Federal financial and nonfinancial assistance and benefits under a CSREES program (*e.g.*, debarment or suspension of an individual involved or a determination that an applicant is not responsible based on submitted organizational management information).

§ 3430.17 Content of an application.

The RFA provides instructions about how to access a funding opportunity. The funding opportunity contains the application package, which includes the forms necessary for completion of an application in response to the RFA, as well as the application instructions. The application instructions document, ''A Guide for the Preparation and Submission of CSREES Applications via Grants.gov,'' is intended to assist applicants in the preparation and submission of applications to CSREES. It is also the primary document for use in the preparation of CSREES applications via Grants.gov.

§ 3430.18 Submission of an application.

(a) *When to submit*. The RFA will provide deadlines for the submission of letters of intent, if requested and required, and applications. CSREES may issue separate RFAs and/or establish separate deadlines for different types of applications, different grant instruments, different topics or phases of the grant programs. If applications are not received by applicable deadlines, they will not be considered for funding. Exceptions will only be considered when extenuating circumstances exist and justification and supporting documentation are provided to CSREES.

(b) *What to submit*. The contents of the applicable application package, as well as any other information, is to be submitted by the due date.

(c) *Where to submit*. The RFA will provide addresses for submission of letters of intent, if requested or required. It will also indicate permissible methods of submission (*i.e.*, electronic, e-mail, hand-delivery, U.S. Postal Service, courier). Conformance with preparation and submission instructions is required and will be strictly enforced unless a deviation had been approved in advance of application submission. CSREES may establish additional requirements. CSREES may return without review applications that are not consistent with the RFA instructions.

§ 3430.19 Resubmission of an application.

(a) *Previously unfunded applications*. (1) Applications that are resubmitted to a program, after being previously submitted but not funded by that program, must include the following information:

(i) The CSREES-assigned proposal number of the previously submitted application;

(ii) Summary of the previous reviewers' comments; and

(iii) Explanation of how the previous reviewers' comments or previous panel summary have been addressed in the current application.

(2) Resubmitting an application that has been revised based on previous reviewers' critiques does not guarantee the application will be recommended for funding.

(b) *Previously funded applications*. (1) CSREES competitive programs are generally not designed to support multiple grant awards activities that are essentially repetitive in nature. PDs who have had their projects funded previously are discouraged from resubmitting relatively identical applications for further funding. Applications that are sequential continuations or new stages of previously funded projects must compete with first-time applications, and should thoroughly demonstrate how the proposed project expands substantially on previously funded efforts and promotes innovation and creativity beyond the scope of the previously funded project.

(2) An application may be submitted only once to CSREES. The submission of duplicative or substantially similar applications concurrently for review by more than one program will result in the exclusion of the redundant applications from CSREES consideration.

§ 3430.20 Acknowledgment of an application.

The receipt of all letters of intent and applications will be acknowledged by CSREES. Applicants who do not receive an acknowledgement within a certain number of days (as established in the RFA, *e.g.*, 30 and 60 days) of the submission deadline should contact the program contact. Once the application has been assigned a proposal number by CSREES, that number should be cited on all future correspondence.

§ 3430.21 Confidentiality of applications and awards.

(a) Names of submitting institutions and individuals, as well as application content and evaluations, will be kept confidential, except to those involved in the review process, to the extent permissible by law.

(b) If an application contains proprietary information that constitutes a trade secret, proprietary commercial or financial information, confidential personal information, or data affecting the national security, it will be treated

in confidence to the extent permitted by law, provided the information is clearly marked by the proposer with the term ''confidential and proprietary information'' and provided at the bottom of the project narrative or any other attachment included in the application that contains such information: ''The following pages (specify) contain proprietary information which (name of proposing organization) requests not to be released to persons outside the Government, except for purposes of evaluation.''

(c) By law, USDA is required to make the final decisions as to whether the information is required to be kept in confidence. Information contained in unsuccessful applications will remain the property of the proposer. However, USDA will retain for three years one file copy of each application received; extra copies will be destroyed. Public release of information from any application submitted will be subject to existing legal requirements. Any application that is funded will be considered an integral part of the award and normally will be made available to the public upon request, except for designated proprietary information that is determined by USDA to be proprietary information.

(d) The inclusion of proprietary information is discouraged unless it is necessary for the proper evaluation of the application. If proprietary information is to be included, it should be limited, set apart from other text on a separate page, and keyed to the text by numbers. It should be confined to a few critical technical items that, if disclosed, could jeopardize the obtaining of foreign or domestic patents. Trade secrets, salaries, or other information that could jeopardize commercial competitiveness should be similarly keyed and presented on a separate page. Applications or reports which attempt to restrict dissemination of large amounts of information may be found unacceptable by USDA and constitute grounds for return of the application without further consideration. Without assuming any liability for inadvertent disclosure, USDA will limit dissemination of such information to its employees and, where necessary for the evaluation of the application, to outside reviewers on a confidential basis. An application may be withdrawn at any time prior to the final action thereon.

Subpart C—Pre-Award: Application Review and Evaluation

§ 3430.31 Guiding principles.

The guiding principle for grant application review and evaluation is to ensure that each proposal is treated in a consistent and fair manner regardless of regional and institutional affiliation. After the evaluation process by the review panel, the CSREES through the program officer ensures that applicants receive appropriate feedback and comments on their proposals, and processes the awards in as timely a manner as possible.

§ 3430.32 Preliminary application review.

Prior to technical examination, a preliminary review will be made of all applications for responsiveness to the administrative requirements set forth in the RFA. Applications that do not meet the administrative requirements may be eliminated from program competition. However, USDA retains the right to conduct discussions with applicants to resolve technical and/or budget issues, as deemed necessary by USDA.

§ 3430.33 Selection of reviewers.

(a) *Requirement.* CSREES is responsible for performing a review of applications submitted to CSREES competitive award programs in accordance with section 103(a) of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7613(a)). Reviews are undertaken to ensure that projects supported by CSREES are of high quality and are consistent with the goals and requirements of the funding program. Applications submitted to CSREES undergo a programmatic evaluation to determine the worthiness of Federal support. The evaluations consist of a peer panel review and also may entail an assessment by Federal employees and ad hoc reviewers.

(b) *CSREES Peer Review System.* The CSREES Application Review Process is accomplished through the use of the CSREES Peer Review System (PRS), a web-based system which allows reviewers and potential reviewers to update personal information and to complete and submit reviews electronically to CSREES.

(c) *Relevant training and experience.* Reviewers will be selected based upon training and experience in relevant scientific, extension, or education fields taking into account the following factors:

(1) Level of relevant formal scientific, technical education, and extension experience of the individual, as well as the extent to which an individual is engaged in relevant research, education, or extension activities;

(2) Need to include as reviewers experts from various areas of specialization within relevant scientific, education, and extension fields;

(3) Need to include as reviewers other experts (e.g., producers, range or forest managers/operators, and consumers) who can assess relevance of the applications to targeted audiences and to program needs;

(4) Need to include as reviewers experts from a variety of organizational types (*e.g.,* colleges, universities, industry, state and Federal agencies, private profit and nonprofit organizations) and geographic locations;

(5) Need to maintain a balanced composition of reviewers with regard to minority and female representation and an equitable age distribution; and

(6) Need to include reviewers who can judge the effective usefulness to producers and the general public of each application.

(d) *Confidentiality.* The identities of reviewers will remain confidential to the maximum extent possible. Therefore, the names of reviewers will not be released to applicants. If it is possible to reveal the names of reviewers in such a way that they cannot be identified with the review of any particular application, this will be done at the end of the fiscal year or as requested. Names of submitting institutions and individuals, as well as application content and peer evaluations, will be kept confidential, except to those involved in the review process, to the extent permitted by law. Reviewers are expected to be in compliance with CSREES Confidentiality Guidelines. Reviewers provide this assurance through PRS.

(e) *Conflicts of interest.* During the evaluation process, extreme care will be taken to prevent any actual or perceived conflicts of interest that may impact review or evaluation. For the purpose of determining conflicts of interest, the academic and administrative autonomy of an institution shall be determined. Reviewers are expected to be in compliance with CSREES Conflict-of-interest Guidelines. Reviewers provide this assurance through PRS.

§ 3430.34 Evaluation criteria.

(a) To ensure any project receiving funds from CSREES is consistent with the broad goals of the funding program, the content of each proposal/application submitted to CSREES will be evaluated based on a pre-determined set of review criteria. It is the responsibility of the Program Officer to develop, adopt, adapt, or otherwise establish the criteria by which proposals are to be evaluated. It may be appropriate for the Program Officer to involve other scientists or stakeholders in the development of criteria, or to extract criteria from legislative authority or appropriations

language. The review criteria is described in the RFA and shall not include criteria concerning any cost sharing or matching requirements per section 7301 of the Food, Conservation, and Energy Act of 2008.

(b) In order that all potential applicants for a program have similar opportunities to compete for funds, all reviewers will receive from the Program Officer a description of the review criteria. Reviewers are instructed to use those same evaluation criteria, and only those criteria, to judge the merit of the proposals they review.

§ 3430.35 Review of noncompetitive applications.

(a) Some projects are directed by either authorizing legislation and/or appropriations to specifically support a designated institution or set of institutions for particular research, education or extension topics of importance to the nation, a State or a region. Although these projects may be awarded noncompetitively, these projects or activities are subject to the same application process, award terms and conditions, Federal assistance laws and regulations, reporting and monitoring requirements, and post-award administration and closeout policies and procedures as competitive grant programs. The only difference is these applications are not subject to a competitive peer review process at the Agency level.

(b) All noncompetitive applications recommended for funding are required to be merit reviewed and the merit review documented by the CSREES program official. For awards recommended for funding at or greater than $10,000, an independent and unit merit review are required.

§ 3430.36 Procedures to minimize or eliminate duplication of effort.

CSREES may implement appropriate business processes to minimize or eliminate the awarding of CSREES grants that unnecessarily duplicate activities already being sponsored under other grant awards, including awards made by other Federal agencies. Business processes may include the review of the Current and Pending Support Form; documented CRIS searches prior to award; the conduct of project director (PD) workshops, conferences, meetings, and symposia; and agency participation in Federal government-wide and other committees, taskforces, or groups that seek to solve problems related to agricultural research, education, and extension and other activities delegated to the CSREES administrator.

§ 3430.37 Feedback to applicants.

Copies of individual reviews and/or summary reviews, not including the identity of reviewers, will be sent to the applicant PDs after the review process has been completed.

Subpart D—Award

§ 3430.41 Administration.

(a) *General.* Within the limit of funds available for such purpose, the CSREES ADO shall make grants to those responsible, eligible applicants whose applications are judged most meritorious under the procedures set forth in the RFA. The date specified by the CSREES ADO as the effective date of the grant shall be no later than September 30 of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. It should be noted that the project need not be initiated on the grant effective date, but as soon thereafter as practical so that project goals may be attained within the funded project period. All funds granted by CSREES shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations, the terms and conditions of the award, the applicable Federal cost principles, and the Department's assistance regulations (7 CFR parts 3015 and 3019).

(b) *Organizational management information.* Specific management information relating to an applicant shall be submitted on a one-time basis as part of the responsibility determination prior to the award of a grant, if such information has not been provided previously to CSREES. CSREES will provide copies of forms recommended for use in fulfilling these requirements as part of the preaward process.

(c) *Notice of Award.* The notice of award document (*i.e.,* Form CSREES–2009, Award Face Sheet) will provide pertinent instructions and information including, at a minimum, the following:

(1) Legal name and address of performing organization or institution to whom the Administrator has awarded a grant;

(2) Title of project;

(3) Name(s) and institution(s) of Project Director(s);

(4) Identifying award number assigned by CSREES or the Department;

(5) Project period;

(6) Total amount of CSREES financial assistance approved;

(7) Legal authority(ies) under which the grant is awarded;

(8) Appropriate CFDA number;

(9) Approved budget plan or referenced thereof; and

(10) Other information or provisions (including the Terms and Conditions) deemed necessary by CSREES to carry out its respective granting activities or to accomplish the purpose of a particular grant.

(d) *Other terms and conditions.* CSREES may, with respect to any grant, impose additional conditions prior to or at the time of any award when, in the CSREES' judgment, such conditions are necessary to assure or protect advancement of the approved project, the interests of the public, or the conservation of grant funds.

Subpart E—Post-Award and Closeout

§ 3430.51 Payment.

(a) All payments will be made in advance unless a deviation is accepted (see § 3430.3) or as specified in paragraph (b) of this section. All payments to the grantee shall be made via the U.S. Department of Health and Human Services' Payment Management System (DHHS–PMS) or another electronic funds transfer (EFT) method except for awards to other Federal agencies. Grantees are expected to request funds via DHHS–PMS for reimbursement basis in a timely manner.

(b) If CSREES has determined that advance payment is not feasible and that the grantee does not maintain or demonstrate the willingness to maintain: Written procedures that minimize the time elapsing between the transfer of funds and disbursement by the grantee, and financial management systems that meet the standards for fund control and accountability as established in § 3430.61; CSREES shall use the reimbursement method.

§ 3430.52 Cost sharing and matching.

(a) *General.* Grantees may be required to match the Federal funds received under a CSREES grant. The required percentage of matching, type of matching (*e.g.,* cash and/or in-kind contributions), sources of match (*e.g.,* non-Federal), and whether CSREES has any authority to waive the match will be specified in the subpart applicable to the specific grant program, as well as in the RFA.

(b) *Indirect Costs.* Grantees' matching contribution may also include unrecoverable indirect costs. Such costs may be accepted as part of the grantee's resource contribution provided the total amount of indirect cost claimed under the Federal and non-Federal portions of the costs, when combined, do not exceed the applicant's negotiated

indirect cost rate or if applicable, the statutory cap on indirect costs. Indirect costs provisions for each specific grant program are identified in the ''Funding restrictions'' section of the subpart for each individual grant program.

§ 3430.53 Program income.

(a) CSREES shall apply the standards set forth in this section in requiring grantee organizations to account for program income related to projects financed in whole or in part with Federal funds.

(b) Unless otherwise provided in the authorizing statute, program income earned during the project period shall be retained by the grantee and, in accordance with the terms and conditions of the award, shall be added to funds committed to the project by CSREES and grantee and used to further eligible project or program objectives. Any specific program deviations will be identified in the individual subparts.

(c) Unless the program regulations identified in the individual subpart provide otherwise, grantees shall follow the terms and conditions of the award.

§ 3430.54 Technical reporting.

(a) *Requirement.* All projects supported with Federal funds under this part must be documented in the Current Research Information System (CRIS).

(b) *Initial Documentation in the CRIS Database.* Information collected in the ''Work Unit Description'' (Form AD–416) and ''Work Unit Classification'' (Form AD–417) is required upon project initiation for all new awards in CRIS (*i.e.*, prior to award).

(c) *Annual CRIS Reports.* Unless stated differently in the grant terms and conditions, an annual ''Accomplishments Report'' (Form AD–421) is due 90 calendar days after the award's anniversary date (*i.e.*, one year following the month and day of which the project period begins and each year thereafter up until a final report is required). An annual report covers a one-year period. In addition to the Form AD–421, the following information, when applicable, must be submitted to the programmatic contact person identified in block 4 of the Award Face Sheet (Form CSREES–2009): A comparison of actual accomplishments with the goals established for the reporting period (where the output of the project can be expressed readily in numbers, a computation of the cost per unit of output should be considered if the information is considered useful); the reasons for slippage if established goals were not met; and additional pertinent information including, when appropriate, analysis and explanation of cost overruns or unexpectedly high unit costs. The annual report of ''Funding and Staff Support'' (Form AD–419) is due February 1 of the year subsequent to the Federal fiscal year being reported.

(d) *CRIS Final Report.* The CRIS final report, ''Accomplishments Report'' (Form AD–421), covers the entire period of performance of the award. The report should encompass progress made during the entire timeframe of the project instead of covering accomplishments made only during the final reporting segment of the project. In addition to providing the information required under paragraph (c) of this section, the final report must include the following when applicable: A disclosure of any inventions not previously reported that were conceived or first actually reduced to practice during the performance of the work under the award; a written statement on whether or not the awardee elects (or plans to elect) to obtain patent(s) on any such invention; and identify equipment purchased with any Federal funds under the award and indicate subsequent use of such equipment.

(e) *CRIS Web Site Via Internet.* The CRIS database is available to the public on the World Wide Web. CRIS project information is available via the Internet CRIS Web site at *http://cris.csrees.usda.gov.* To submit forms electronically, the CRIS forms Web site can be accessed through the CRIS Web site or accessed directly at *http://csf.uvm.edu/cris.*

(f) Grantees may be required to submit other technical reports or submit the CRIS reports more frequently than annual. Additional requirements for a specific grant program are described in the applicable subpart after subpart F and are identified in the RFA. The Award Face Sheet (Form CSREES–2009) also will specify these additional reporting requirements.

§ 3430.55 Financial reporting.

(a) *SF–269, Financial Status Report.* Unless stated differently in the grant terms and conditions, a SF–269, Financial Status Report, is due 90 days after the expiration of the grant and should be submitted to the Awards Management Branch (AMB) at Awards Management Branch; Office of Extramural Programs, CSREES; U.S. Department of Agriculture; STOP 2271; 1400 Independence Avenue, SW.; Washington, DC 20250–2271. The awardee shall report program outlays and program income on the same accounting basis (*i.e.*, cash or accrual) that it uses in its normal accounting system. When submitting a final SF–269, Financial Status Report, the total matching contribution, if required, should be shown in item 12., Remarks. The final SF–269 must not show any unliquidated obligations. If the awardee still has valid obligations that remain unpaid when the report is due, it shall submit a provisional report (showing the unliquidated obligations) by the due date and a final report when all obligations have been liquidated. When submitting a provisional report, the awardee shall inform AMB when it expects a final report. If AMB waives the requirement for provisional reports, the grantee will be so notified. SF–269, Financial Status Reports, must be submitted by all grantees, including Federal agencies and national laboratories.

(b) *Grants with Required Matching.* For grants requiring a matching contribution, an annual SF–269, Financial Status Report, is required and this requirement will be indicated on the Award Face Sheet, Form CSREES–2009, in which case it must be submitted no later than 90 days following the end of the Federal fiscal year, September 30th.

(c) *Overdue SF–269, Financial Status Reports.* Grantees with overdue SF–269, Financial Status Reports, or other required financial report (as identified in the grant terms and conditions), will have their applicable balances at DHHS–PMS restricted or placed on ''manual review,'' which restricts the grantee's ability to draw funds thus requiring prior approval from CSREES. If any remaining available balances are needed by the grantee, the grantee will be required to contact AMB to request permission to draw any additional funds and may be required to provide documentation to support the draw.

(d) *SF–272, Federal Cash Transactions Report.* Grantees (receiving electronic payments through DHHS–PMS) are required to submit their SF–272, Federal Cash Transactions Report, via the DHHS–PMS by the specified dates. Failure to submit this quarterly report by the due date may result in funds being restricted by DHHS–PMS. Grantees (not receiving payments through DHHS–PMS) may be exempt from this reporting requirement.

(e) *Additional reporting requirements.* CSREES may require additional financial reporting requirements as follows: CSREES may require forecasts of Federal cash requirements in the ''Remarks'' section of the report; and when practical and deemed necessary, CSREES may require grantees to report in the ''Remarks'' section the amount of cash advances received in excess of three days (i.e., short narrative with explanations of actions taken to reduce

the excess balances). When CSREES needs additional information or more frequent reports, the following will be observed: When additional information is needed to comply with legislative requirements, CSREES will issue instructions to require grantees to submit such information under the ''Remarks'' section of the reports; and CSREES determines that a grantee's accounting system is inadequate, additional pertinent information to further monitor awards may be obtained upon written notice to the grantee until such time as the system is brought up to standard. CSREES, in obtaining this information, shall comply with the PRA clearance requirements and the implementing regulations codified at 5 CFR part 1320.

§ 3430.56 Project meetings.

In addition to reviewing (and monitoring the status of) progress and final technical reports and financial reports, CSREES program officers may use regular and periodic conference calls to monitor the grantee's performance as well as PD conferences, workshops, meetings, and symposia to not only monitor the grants, but to facilitate communication and the sharing of project results. These opportunities also serve to eliminate or minimize CSREES funding unneeded duplicative project activities. Required attendance at these conference calls, conferences, workshops, meetings, and symposia will be identified in the RFA and the grantee should develop a proposal accordingly.

§ 3430.57 Hearings and appeals.

(a) *Scope of the post-award disputes covered*. The disputes covered by this section include: Cost disallowances pursuant to the ADO's decision (*e.g.*, specific disallowances under an individual grant or as the result of an audit report); termination orders; and the final settlement amount under a termination.

(b) *Procedures*. The grantee should submit a letter to the ADO from the applicant's AR, via mail, e-mail, or fax, noting the grantee's dispute and identifying the Grants Officer's decision in question, giving reasons for a request to review and providing any other material pertinent to the request. The letter to the ADO must be dated no later than 60 days after the date of the letter notifying the grantee of the decision in question. CSREES retains the right to consider requests for review after the 60-day period in extenuating circumstances. The ADO will review or designate an individual to review the request. A report will be prepared with a recommendation within 60 days and forwarded to the Deputy Administrator, Office of Extramural Programs for disposition.

§ 3430.58 Closeout.

Most CSREES awards are supported with annual appropriations. On September 30th of the 5th fiscal year after the period of availability for obligation, the funds for these appropriations accounts expire per 31 U.S.C. 1552 and the account is closed. Funds that have not been drawn through DHHS–PMS by the grantee or disbursed through any other system or method by August 31st (of the fifth year appropriation) are subject to be returned to the U.S. Department of Treasury after that date. Please note that the August 31st requirement also applies to awards with a 90-day period concluding on a date after September 30th of that following fifth year. Please note expired appropriations cannot be restored after this date. More specific instructions are provided in the CSREES award terms and conditions.

Research Programs

Subpart F—Specialty Crop Research Initiative

§ 3430.200 Applicability of regulations.

The regulations in this subpart apply to the program authorized under section 412 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7621 *et seq.*).

§ 3430.201 Purpose.

The purpose of this program is to address the critical needs of the specialty crop industry by developing and disseminating science-based tools to address needs of specific crops and their regions, including: Research in plant breeding, genetics, and genomics to improve crop characteristics, such as product, taste, quality, and appearance; environmental responses and tolerances; nutrient management, including plant nutrient uptake efficiency; pest and disease management, including resistance to pests and diseases resulting in reduced application management strategies; and enhanced phytonutrient content; efforts to identify and address threats from pests and diseases, including threats to specialty crop pollinators; efforts to improve production efficiency, productivity, and profitability over the long term (including specialty crop policy and marketing); new innovations and technology, including improved mechanization and technologies that delay or inhibit ripening; and methods to prevent, detect, monitor, control, and respond to potential food safety hazards in the production and processing of specialty crops, including fresh produce. CSREES will award research and extension, including integrated grants to eligible institutions listed in § 3430.203. In addition to the focus areas defined in this section, CSREES may include additional activities or focus areas that will further address the critical needs of the specialty crop industry. Some of these activities or focus areas may be identified by stakeholder groups or by USDA in response to emerging critical needs of the specialty crop industry.

§ 3430.202 Definitions.

The definitions applicable to the program under this subpart include:

Integrated means for the purposes of this program to incorporate the research and extension components of the agricultural knowledge system around a problem area or activity.

Specialty crop means fruits and vegetables, tree nuts, dried fruits, and horticulture and nursery crops (including floriculture).

§ 3430.203 Eligibility.

Eligible applicants for the grant program implemented under this subpart include: Federal agencies; national laboratories; colleges and universities; research institutions and organizations; private organizations or corporations; State agricultural experiment stations; individuals; and groups consisting of 2 or more entities identified in this sentence. To be eligible under this part, individuals must be a citizen or national of the United States as defined in § 3430.2 of this part. Eligible institutions do not include foreign and international organizations, unless otherwise provided in the RFA.

§ 3430.204 Project types and priorities.

For each RFA, CSREES may develop and include the appropriate project types and focus areas (in addition to the five activities or focus areas identified in 3430.201) based on the critical needs of the specialty crop industry as identified through stakeholder input and deemed appropriate by CSREES. Of the funds made available each fiscal year, not less than 10 percent of these funds shall be allocated for each activity or focus area identified in § 3430.201. In making awards for this program, USDA will give higher priority to projects that are multistate, multi-institutional, and multidisciplinary; and include explicit mechanisms to communicate the results to producers and the public.

§ 3430.205 Funding restrictions.

Funds made available under this subpart shall not be used for the construction of a new building or facility or the acquisition, expansion, remodeling, or alteration of an existing facility (including site grading and improvement, and architect fees). Indirect costs are subject to NARETPA section 1462(a) limiting indirect costs to 22 percent of the total Federal funds provided under each award unless superseded by another authority. The maximum allowed indirect cost of 22 percent may be claimed under the Federal portion of the award budget, or the maximum allowed indirect cost of 22 percent may be claimed as a matching contribution (if no indirect costs are requested on the Federal portion of the budget). However, the maximum allowed indirect cost of 22 percent may not be claimed on both the Federal portion of the budget for the award and as a matching contribution; but a grantee may, for example, request 11 percent of indirect costs on both the Federal portion of the budget for the award and as a matching contribution. Or, a grantee may request any other, similar percentage combination that, when combined, does not exceed a maximum indirect cost rate of 22 percent.

§ 3430.206 Matching requirements.

Grantees are required to provide funds or in-kind support from non-Federal sources in an amount that is at least equal to the amount provided by the Federal government. The matching contribution must be provided from non-Federal sources except when authorized by statute. The matching requirements under this subpart cannot be waived.

Signed at Washington, DC, on July 28, 2008.

Colien Hefferan,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. E8–17594 Filed 7–31–08; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF TRANSPORTATION

14 CFR Part 97

[Docket No. 30621; Amdt. No. 3281]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective August 1, 2008. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

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

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. The National Archives and Records Administration (NARA). For Information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs are available online free of charge. Visit *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on July 25, 2008.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	Subject
07/10/08	CT	DANIELSON	DANIELSON	8/6791	VOR–A, AMDT 6B.
07/10/08	FL	FORT LAUDERDALE	FORT LAUDERDALE/HOLLYWOOD INTL.	8/6793	RNAV (GPS) RWY 13, ORIG–A.
07/10/08	NY	ROCHESTER	GREATER ROCHESTER INTL	8/6804	ILS OR LOC RWY 4, AMDT 18.
07/10/08	CT	WINDSOR LOCKS	BRADLEY INTL	8/6807	VOR OR TACAN RWY 33, ORIG–B.
07/10/08	VA	RICHMOND/ASHLAND	HANOVER COUNTY MUNI	8/6823	VOR RWY 16, AMDT 2.
07/11/08	NH	PORTSMOUTH	PORTSMOUTH INTERNATIONAL AT PEASE.	8/7037	ILS OR LOC RWY 34, AMDT 2.
07/11/08	VA	MARTINSVILLE	BLUE RIDGE	8/7042	TAKEOFF MINS AND OBSTACLE DP, AMDT 2.
07/11/08	VA	MARTINSVILLE	BLUE RIDGE	8/7043	RNAV (GPS) RWY 30, AMDT 1.
07/11/08	MN	WILLMAR	WILLMAR MUNI—JOHN L RICE FIELD.	8/7083	RNAV (GPS) RWY 13, ORIG.
07/11/08	MN	ST. PAUL	ST PAUL DOWNTOWN HOLMAN FLD.	8/7119	ILS OR LOC RWY 32, AMDT 4A.
07/11/08	MN	ST. PAUL	ST PAUL DOWNTOWN HOLMAN FLD.	8/7120	ILS RWY 14, ORIG–A.
07/11/08	MN	ST. PAUL	ST PAUL DOWNTOWN HOLMAN FLD.	8/7121	COPTER ILS RWY 32, ORIG.
07/11/08	OH	JACKSON	JAMES A. RHODES	8/7131	RNAV (GPS) RWY 1, AMDT 1.
07/11/08	OH	JACKSON	JAMES A. RHODES	8/7132	RNAV (GPS) RWY 19, AMDT 1.
07/11/08	OH	JACKSON	JAMES A. RHODES	8/7133	VOR/DME A, AMDT 2
07/11/08.	AK	NOME	NOME	8/7169	ILS OR LOC/DME Y RWY 28, AMDT 3.
07/11/08	AK	NOME	NOME	8/7170	ILS OR LOC/DME Z RWY 28, AMDT 3.
07/11/08	NE	LEXINGTON	JIM KELLY FIELD	8/7183	RNAV (GPS) RWY 14, AMDT 1.
07/12/08	MI	OSCODA	OSCODA–WURTSMITH	8/7241	ILS OR LOC/DME RWY 24, AMDT 2.
07/12/08	MI	FLINT	BISHOP INTL	8/7242	RNAV (GPS) RWY 9, ORIG.
07/12/08	MI	FLINT	BISHOP INTL	8/7243	RNAV (GPS) RWY 18, ORIG.
07/12/08	PA	PITTSBURGH	PITTSBURGH INTL	8/7266	RNAV (GPS) RWY 14, AMDT 3.
07/13/08	NE	GRANT	GRANT MUNI	8/7318	NDB RWY 15, AMDT 3.
07/13/08	NE	GRANT	GRANT MUNI	8/7319	NDB RWY 33, AMDT 3.
07/13/08	NE	GRANT	GRANT MUNI	8/7320	VOR/DME RWY 15, ORIG.
07/14/08	NC	WADESBORO	ANSON COUNTY	8/7439	RNAV (GPS) RWY 16, ORIG.
07/14/08	OK	TULSA	TULSA INTL	8/7489	RNAV (GPS) RWY 36L, ORIG.
07/14/08	OK	BUFFALO	BUFFALO MUNI	8/7490	NDB A, AMDT 2A.
07/14/08	OK	BUFFALO	BUFFALO MUNI	8/7491	RNAV (GPS) RWY 17, ORIG.
07/16/08	AK	YAKUTAT	YAKUTAT	8/7878	RNAV (GPS) RWY 29, AMDT 2.
07/16/08	OR	NORTH BEND	SOUTHWEST OREGON RGNL	8/7879	TAKEOFF MINS AND OBSTACLE DP, AMDT 4.
07/16/08	KS	FORT LEAVENWORTH	SHERMAN AAF	8/7885	RNAV (GPS) RWY 15, ORIG.
07/16/08	KS	FORT LEAVENWORTH	SHERMAN AAF	8/7888	VOR/DME A, ORIG–A.
07/16/08	KS	FORT LEAVENWORTH	SHERMAN AAF	8/7889	RNAV (GPS) RWY 33, ORIG.

FDC date	State	City	Airport	FDC No.	Subject
07/16/08	KS	FORT LEAVENWORTH	SHERMAN AAF	8/7890	NDB RWY 33, AMDT 4.
07/21/08	FL	ORLANDO	ORLANDO INTL	8/8597	RNAV (GPS) RWY 17L, ORIG–A.
07/21/08	FL	ORLANDO	ORLANDO INTL	8/8598	ILS OR LOC RWY 17L, ORIG–A.
07/21/08	CA	SAN DIEGO/EL CAJON	GILLESPIE FIELD	8/8677	LOC–D, AMDT 10A.
05/31/08	MT	GREAT FALLS	GREAT FALLS INTL	8/9063	NDB RWY 34, AMDT 16A THIS NOTAM PUBLISHED IN TL 08–15 IS HEREBY RESCINDED.
05/31/08	IN	RICHMOND	RICHMOND MUNI	8/9127	VOR OR GPS RWY 6, AMDT 11A. THIS NOTAM PUBLISHED IN TL 08–15 IS HEREBY RESCINDED IN ITS ENTIRETY.

[FR Doc. E8–17619 Filed 7–31–08; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0720]

RIN 1625–AA00

Safety Zone; Bollotta & Associates USS Midway Fireworks Display; San Diego Harbor, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone, on the navigable waters of the San Diego Bay in support of the Bollotta & Associates USS Midway Fireworks Display. This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 9:30 p.m. through 10 p.m. on August 2, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0720 and are available online at *http://www.regulations.gov.* They are also available for inspection or copying at two locations: The Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the U.S. Coast Guard Sector San Diego, 2710 N. Harbor Drive, San Diego, CA 92101 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call Petty Officer Kristen Beer, USCG, Waterways Management, U.S. Coast Guard Sector San Diego at (619) 278–7233. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it was impracticable since the logistical details of the fireworks show was not finalized nor presented to the Coast Guard in enough time to draft and publish an NPRM. As such, the event would occur before the rulemaking process was complete.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The issuance of the final approval and permitting was so recent that in order for the rule to be in effect at the time of the fireworks display it is necessary that the rule be made effective less than 30 days after publication. In addition, it would be contrary to the public interest not to publish this rule due to protection from inherent dangers to the crew and public that are present from a fireworks display.

Background and Purpose

Fireworks & Stage FX America, Inc. is sponsoring the Bollotta & Associates USS Midway Fireworks Display, a fireworks presentation from an anchored barge located 250 yards from the USS Midway. The safety zone will be an area consisting of a 200 yard radius around the barge. This safety zone is necessary to provide for the safety of the crew, spectators, vessels and other users of the waterway.

Discussion of Rule

The Coast Guard is establishing a safety zone that will be enforced from 9:30 p.m. to 10 p.m. on August 2, 2008. The limits of the safety zone will be an area consisting of a 200 yard radius around the anchored barge located at approximately 32°42′48″ N, 117°10′43″ W.

The safety zone is necessary to provide for the safety of the crews, spectators, and other vessels and users of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs

and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

This determination is based on the size and location of the safety zone. Commercial and recreational vessels will not be hindered by the safety zone. Vessels will not be allowed to transit through the designated safety zone during the specified times, however, vessel traffic can pass safely around the safety zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the San Diego Bay from 9:30 p.m. to 10 p.m. on August 2, 2008.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only one half hour late in the day when vessel traffic is low. Vessel traffic can pass safely around the safety zone. Before the effective period, the Coast Guard will publish a local notice to mariners (LNM) and will issue broadcast notice to mariners (BNM) alerts via marine channel 16 VHF before the safety zone is enforced.

Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would

limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final environmental analysis checklist and a final categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

Words of Issuance and Proposed Regulatory Text

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. A new temporary safety zone § 165.T11–074:

§ 165.T11–074 Safety zone; Bollotta & Associates USS Midway Fireworks Display; San Diego Harbor, San Diego, CA.

(a) *Location*. The limits of the proposed safety zone would be an area consisting of a 200 yard radius around an anchored barge located at approximately 32°42′48″ N, 117°10′63″ W.

(b) *Enforcement Period*. This section will be enforced from 9:30 p.m. to 10 p.m. on August 2, 2008. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions*. The following definition applies to this section: *Designated representative*, means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations*. (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander (PATCOM). The PATCOM may be contacted on VHF–FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: July 22, 2008.

T.H. Farris,

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

[FR Doc. E8–17608 Filed 7–31–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0732]

RIN 1625–AA00

Safety Zone; Seafair Fireworks, Lake Washington, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of Lake Washington, WA during Seattle's Seafair Fireworks show. This safety zone is necessary to ensure the safety of recreational and commercial boaters in the area during the fireworks show on August 2nd, 2008. Entry into, transit through, mooring, or anchoring within this zone is prohibited unless authorized by the Captain of the Port, Puget Sound or his designated representatives.

DATES: This rule is effective from 8 p.m. until 11:59 p.m. (PDT) on August 2nd, 2008.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2008–0732 and are available online at *http://www.regulations.gov*. This material is also available for inspection or copying at two locations: The Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the Waterways Management Division, Coast Guard Sector Seattle, 1519 Alaskan Way South, Seattle, WA 98134, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call Ensign Heidi Bevis, c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, Washington 98134, (206) 217–6002. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is necessary to ensure the safety of commercial and recreational vessels in the vicinity of the fireworks on the date and times this rule will be in effect and delay would be contrary to the public interest.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to the public interest, since immediate action is needed to ensure public safety.

Background and Purpose

The Coast Guard is establishing a temporary safety zone to provide for the safety of boaters during Seattle's Seafair Fireworks Show. The Coast Guard is establishing this zone to protect vessels and persons from the hazards associated with the fallout of burning embers that will be generated by the fireworks. The safety zone is also intended to protect boaters from the hazards associated with excessive vessel congestion associated with Seafair's activities. The safety zone is needed to keep vessels out of the affected area during the show.

Discussion of Rule

This temporary rule will prohibit the entering, transiting, anchoring, or mooring of all vessels in a safety zone on Lake Washington. The safety zone includes all waters within a 1000 feet radius centered on the point 47°34′15″ North latitude, 122°16′10″ West longitude on Lake Washington.

The Coast Guard, through this action, intends to promote the safety of personnel and vessels in the area. Entry into this zone by all vessels will be prohibited unless authorized by the Captain of the Port. This safety zone will be enforced by the U.S. Coast Guard. The Captain of the Port may be assisted in the enforcement of this safety zone by other federal, state, or local agencies.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. This expectation is based on the fact that the regulated area established by the regulation would encompass a small area that should not significantly impact commercial or recreational traffic. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit this portion of Lake Washington during the time this regulation is in effect. The zone will not have a significant economic impact due to its short duration and small area. Vessel traffic can safely pass around the safety zone. Before the effective period, we will issue maritime advisories to users of Lake Washington. Because the impacts of this rule are expected to be so minimal, the Coast Guard certifies under 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these

standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

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

List of Subjects in 33 CFR Part 165

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

■ For the reasons discussed in the preamble, the Coast Guard amends part 165 of Title 33, Code of Federal Regulations, as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. From 8 p.m. until 11:59 p.m. (PDT) on August 2nd, 2008, a temporary section § 165.T13–054 is added to read as follows:

§ 165.T13–054 Safety Zone: Lake Washington, WA.

(a) *Location.* The following area is a safety zone: The waters within an area 1000 feet radius centered on the point 47°34′15″ N, 122°16′10″ W on Lake Washington, Washington.

(b) *Regulations.* In accordance with the general regulations in 33 CFR part 165, subpart C, no vessel may enter, transit, moor, or anchor within this safety zone, except for vessels authorized by the Captain of the Port or his designated representatives.

(c) *Enforcement Period.* From 8 p.m. until 11:59 p.m. on August 2nd, 2008 unless sooner cancelled by the Captain of the Port.

Dated: July 22, 2008.

Stephen P. Metruck,

Captain, U.S. Coast Guard, Captain of the Port Puget Sound.

[FR Doc. E8–17618 Filed 7–31–08; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2008–0336; FRL–8697–1]

Approval and Promulgation of State Implementation Plans: Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving revisions to Idaho's State Implementation Plan (SIP) relating to open burning and crop residue disposal requirements and visible emissions. The Director of the Idaho Department of Environmental Quality (IDEQ) submitted a draft SIP revision to the EPA on April 15, 2008. The EPA proposed to approve this draft SIP revision on April 29, 2008, and stated that, if adopted by the State substantially unchanged from its current form, it would satisfy the requirements of the Clean Air Act (hereinafter the Act or CAA). 73 FR 23155. The Director of the IDEQ submitted a final SIP revision to the EPA on May 28, 2008. Based on EPA's review of this final SIP revision, EPA's analysis and review of the 2008 draft SIP revision (73 FR 23155), and comments received by the EPA during the public comment period on EPA's proposed approval of the draft SIP revision, the EPA is approving the final SIP revision submitted by the IDEQ on May 28, 2008, because it satisfies the requirements of the CAA.

The Director of the IDEQ also submitted a SIP revision relating to open burning and crop residue disposal requirements on May 22, 2003, which the EPA approved on July 11, 2005 (70 FR 39658). In a ruling issued on January 30, 2007, and amended on May 29, 2007, that approval was remanded and vacated by the U.S. Court of Appeals for the 9th Circuit in *Safe Air for Everyone* v. *USEPA,* 475 F.3d 1096, amended 488 F.3d 1088 (9th Cir 2007) (SAFE decision). In the EPA's April 29, 2008, proposal discussed above, the EPA re-proposed to approve the portion of the May 22, 2003, SIP revision that would not be changed by the draft SIP revision, if adopted, submitted on April 15, 2008. We are also finalizing our approval of this portion of the 2003 SIP revision because it satisfies the requirements of the Act and does not contravene the Court's SAFE decision.

DATES: This action is effective on September 2, 2008.

ADDRESSES: The EPA has established a docket for this action under Docket Identification No. EPA–R10–OAR–2008–0336. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information 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 EPA Region 10, Office of Air, Waste, and Toxics (AWT–107), 1200 Sixth Avenue, Seattle, Washington 98101. The EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Donna Deneen, (206) 553–6706, or by e-mail at *deneen.donna@epa.gov.*

SUPPLEMENTARY INFORMATION:

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the 9th Circuit by September 30, 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. Moreover, under CAA section 307(b)(2), the requirements established by this final action may not be challenged separately in any civil or criminal proceedings brought to enforce these requirements.

Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean the EPA. Information is organized as follows:

Table of Contents

I. Background
II. Final 2008 SIP Revision Request
III. Comments Received During the EPA Public Comment Period
IV. Final Action
V. Statutory and Executive Order Reviews

I. Background

The EPA is approving revisions to Idaho's SIP relating to open burning and crop residue disposal requirements and to a provision addressing visible emissions. This final approval encompasses a revision relating to IDAPA 58.01.01.600–603, 606, 617–623, and 625, submitted recently by the IDEQ to the EPA on May 28, 2008, and referred to here as the ''2008 SIP revision request.'' This final approval also encompasses a portion of a revision request relating to IDAPA 58.01.01.604, 607–610, 612, 613, 615 and 616 submitted by the IDEQ to the EPA on May 22, 2003, and referred to here as the ''2003 SIP revision request.''

On May 22, 2003, Idaho submitted to the EPA a requested revision to its SIP relating to open burning and crop residue disposal requirements. This 2003 SIP revision request contained a number of changes including editorial changes, the addition of a provision regarding the immediate abatement of open burning in emergencies, removal of a provision regarding discretionary approval of alternatives to open burning, and the addition of a provision to specify that crop residue burning was an allowable form of open burning.

On July 11, 2005, the EPA approved Idaho's 2003 SIP revision request, explaining that we considered it to be a clarification of Idaho's prior SIP rather than a substantive amendment. 70 FR 39658 and 70 FR 41963 (2005 SIP approval). A citizen's group filed a petition for judicial review of our 2005 SIP approval in the U.S. Court of Appeals for the 9th Circuit, claiming that the approval relaxed the existing SIP and that we were incorrect in viewing the 2003 SIP revision request as a clarification of the prior SIP. (*Safe Air for Everyone* v. *USEPA,* 475 F.3d 1096, amended 488 F.3d 1088 (9th Cir 2007)). On January 30, 2007 (as amended on May 29, 2007), the Court granted the petition for review, vacated the 2005 SIP approval, and remanded the matter to the EPA.

Subsequent to the remand, Idaho initiated a negotiated process to revise the challenged portions of the 2003 SIP revision request. This negotiated process included discussions with representatives of the State, the IDEQ, the Idaho State Department of Agriculture (ISDA), Safe Air For Everyone (SAFE), numerous agricultural organizations, and farmers who burn crop residue. As a result of the negotiations, the State has revised its approach to the open burning of crop residue, enacted new legislation addressing the practice, and developed rules for submission to the EPA.

On April 15, 2008, Idaho submitted a draft SIP revision containing the state's revised draft rules (the 2008 draft SIP revision request) and a request for parallel processing. The EPA proposed approval of the 2008 draft SIP revision request on April 29, 2008 (73 FR 23155), and explained in its discussion of parallel processing that it may take final action to approve a SIP revision request if the final version of the adopted state submission remains substantially unchanged from the submission on which the proposed approval rulemaking was based (73 FR 23156). In the same notice, the EPA proposed approval of the portion of the 2003 SIP revision request that would not be changed by the 2008 SIP revision request and that was not part of the federally approved Idaho SIP due to the Court's remand and vacatur of our 2005 SIP approval of the 2003 submission. 73 FR 23155. The EPA did not parallel process the portion of the 2003 SIP revision request that was not changed by the 2008 draft SIP revision request or the 2008 SIP revision request because this portion of the 2003 SIP revision request had already been through the state public process, was adopted in its final form under state law, and was officially submitted to the EPA prior to our proposed approval on April 29, 2008 (73 FR 23155). More discussion on the basis for our approval can be found at 73 FR 23155 (April 29, 2008).

II. Final 2008 SIP Revision Request

Idaho initiated a 30-day public comment period on the 2008 draft SIP revision request and, on May 2, 2008, held a public hearing on the request. Idaho subsequently prepared and adopted its final version of the 2008 SIP revision request, and on May 28, 2008, submitted the resulting 2008 SIP revision request to the EPA for final action and approval.

In response to public comments during the state public comment period on its draft SIP revision request, the IDEQ made several clarifications which it included in the final 2008 SIP revision request submitted to EPA. For example, the IDEQ made several clarifications in response to comments from the Nez Perce Tribe to further clarify that the 2008 SIP revision request did not apply to crop residue burning on Indian Reservations in Idaho and to better clarify where certain technical information in the SIP, such as air monitoring data, pertained to the Nez Perce burn permit program and reservation lands rather than to the IDEQ and state lands.

In response to comments from SAFE, the IDEQ clarified certain criteria for making burning decisions under IDAPA 58.01.01.621.01 and how the IDEQ intends to implement those criteria. For example, the IDEQ confirmed that it will use the data from the continuous PM 2.5 monitors it operates in deciding whether to permit burning in accordance with IDAPA 58.01.01.621.01. The IDEQ also confirmed that it would account for background smoke from wildfires and other burning, including emissions from wildfires and burning in tribal areas and in upwind states, in determining whether the levels that would prohibit burning in IDAPA 58.01.01.621.01 are exceeded or predicted to be exceeded. With respect to the prohibition in IDAPA 58.01.01.621.01.f on authorizing burns if conditions are such that institutions with sensitive populations will be adversely impacted or when the plume is predicted to impact such institutions, the IDEQ clarified that the prohibition would apply to burning within three miles of institutions with sensitive populations when wind speeds exceed 12 miles and that, generally, the wind speed should be within 3 to 8 miles per hour.

The EPA has reviewed the revisions and the submitted clarifications made by the IDEQ in the final 2008 SIP revision request and has determined that the 2008 SIP revision request remains substantially unchanged from the 2008 draft SIP revision request on which the EPA's proposed approval was based. Based on our review and analysis of the 2008 draft SIP revision request and associated proposed EPA approval on April 29, 2008 (73 FR 23155), Idaho's public comment period and hearing on the draft 2008 SIP revision request and IDEQ's responses to comments submitted to EPA following the State's administrative process, and the comments the EPA received during the public comment period on EPA's proposed approval, we are taking final action to approve the 2008 SIP revision request. Moreover, based on these factors, we also conclude that approval of the SIP will not interfere with any applicable requirement concerning attainment and reasonable further

progress or any other applicable requirement of the Clean Air Act.

III. Comments Received During the EPA Public Comment Period

The following summarizes the issues raised in comments on the EPA's proposed approval on April 29, 2008 (73 FR 23155), and provides EPA's responses to those issues.

Comment: A number of commenters objected to agricultural field burning and asked the EPA not to approve the 2008 SIP revision request, citing health and general air quality concerns. Some commenters suggested that, by allowing field burning, agribusinesses were getting special treatment and that economic concerns were outweighing health concerns. One commenter added that there are viable alternatives to burning and that the end consumer should bear the true costs of products they demand.

Response: The EPA is aware of and continues to be concerned about the health and welfare impacts associated with crop residue burning in Idaho. In reviewing a SIP revision, EPA's task is to determine whether the SIP revision complies with the requirements of the Clean Air Act. As discussed in the proposal, the burning of crop residue is allowed under the 2008 SIP revision request only after first obtaining a permit and burn approval from the IDEQ. IDAPA 58.01.01.618–621. The IDEQ may approve a burn only if the IDEQ determines that ambient air quality levels do not exceed seventy five percent of the level of any NAAQS on any day and are not projected to exceed such level over the next 24 hours. In addition, the IDEQ must determine that ambient air quality levels have not reached, and are not forecasted to reach and persist at, eighty percent of the one hour action criteria for particulate matter under IDAPA 58.01.01.556.[1] 58.01.01.621.01. In making these determinations, the IDEQ must consider the expected emissions from the proposed burn, the proximity of the proposed burn to other burns, the moisture content of the fuels, the acreage, crop type and other fuel characteristics, existing and expected meteorological conditions, the proximity of the proposed burn to institutions with sensitive populations, public roadways, and airports, and other relevant factors. IDAPA 58.01.01.621. Other restrictions on the burning of crop residue are contained in IDAPA 58.01.01.617 through 623.

In its response to comments during the state public comment process, the IDEQ made clear that it will consider the smoke contribution from other burns, including wildfires and prescribed burns, as well as the contribution from wildfires and other burning on Indian Reservations and upwind states in determining whether the conditions to allow burning are met. The IDEQ also made other important clarifications regarding how the IDEQ intends to implement those criteria. As explained in our proposal, the EPA has determined that the 2008 draft SIP revision request meets the requirements of the Clean Air Act, including section 110(l) of the Act, which prohibits the Administrator from approving a SIP revision ''if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of [the Act].'' 73 FR 23155 (April 29, 2008). Because the Administrator is required to approve a SIP revision that complies with the provisions of the Clean Air Act and applicable Federal regulations (see 42 U.S.C. 7410(k) and 40 CFR 52.02(a)) and the 2008 SIP revision request complies with those requirements, the EPA is taking final action to approve these revisions to the Idaho SIP.

Comment: Several commenters supported EPA's approval of the state's draft 2008 SIP revision request or agricultural burning. Some thought that restricting field burning was unfair when other types of burning are allowed. Some raised concerns about the economic costs of not burning and losing grass fields and family farms, and in some cases claimed that burning improves air quality because it retains green spaces and prevents those areas from being developed. One commenter that supported burning also acknowledged that there are areas and instances where burning should be tightly monitored and controlled. Some thought burning should be tolerated because it occurs only for a short period during the year.

Response: The EPA acknowledges these commenters' support of the proposed rule. To the extent that the commenters are suggesting the 2008 SIP revision request is too restrictive, however, the EPA adds that it does not have the authority to add or remove restrictions in this rulemaking process and that, in its review of a SIP submission, the EPA's role is to approve or disapprove state choices, based on whether they meet the criteria of the Clean Air Act. In this case, the State of Idaho chose to adopt and submit provisions relating to the burning of crop residue. Accordingly, this final action merely approves the state program as meeting Federal requirements and does not impose additional requirements.

Comment: One commenter said that the EPA is rushing this decision without adequate time for proper study of the issue and consideration of a fee/compensation program. The commenter further stated that growers should be required to pay sufficient compensation to those damaged by pollution from burning.

Response: The Clean Air Act does not specifically require states to impose a fee or compensation requirement for burn programs. As discussed above, the EPA does not have the authority to add provisions to or to remove restrictions in the state program in this rulemaking process. In our review of a SIP submission, the EPA's role is to approve or disapprove state choices, based on whether they meet the criteria of the Clean Air Act. In any event, Idaho House Bill 557 requires a $2/acre fee be paid to the IDEQ prior to burning. See also IDAPA 58.01.01.620.

Section 110(a)(2)(E) of the Clean Air Act does require that the state have adequate funding and staff to carry out the provisions of its SIP. The State of Idaho has stated that it has adequate funding and personnel to carry out the procedures identified in the 2008 SIP revision request and refers to funds appropriated by the Idaho Legislature, future receipts for crop residue burning, and an increase in staff to accomplish these tasks (Section 1.6.2 of the 2008 SIP revision request). The EPA relies on these statements made by the IDEQ to conclude that the 2008 SIP revision request meets the requirements of section 110(a)(2)(E) of the Clean Air Act.

The EPA is unclear about what the commenter means by stating that the EPA is rushing this decision without ''proper study.'' The EPA provided a 30 day public comment opportunity on its proposed approval of the 2008 draft SIP revision request at 73 FR 23155 (April 29, 2008). Based on the analysis and review in that proposal, consideration of public comments received by the EPA during the public comment period, and the final 2008 SIP revision request, the EPA concludes that the IDEQ's 2008 SIP revision request meets the requirements of the Clean Air Act.

Comment: One commenter stated that the cumulative effects of smoke generated by fire of all sorts needed to be limited and that there is a need for more and better data about where the smoke from field burning actually goes.

[1] The current one hour action criteria under IDAPA 58.01.01.556 are an average of 80 μg/m^3 for $PM_{2.5}$ and an average of 385 μg/m^3 for PM_{10}.

Response: In the 2008 SIP revision request, the IDEQ specifically acknowledged that regional coordination of burn decisions and smoke management is important in order to avoid unacceptable cumulative smoke impacts within and across jurisdictions. The IDEQ further explained that it would account for background smoke from wildfires and other burning, including emissions from wildfires and burning in tribal areas and in upwind states, in determining whether the levels that would prohibit burning in IDAPA 58.01.01.621.01 are exceeded or predicted to be exceeded.

As noted above, we reviewed and analyzed the draft 2008 draft SIP revision request in our April 29, 2008, proposal and concluded that the draft 2008 SIP revision request met the requirements of the Clean Air Act.

Comment: The Nez Perce Tribe stated that it supports the EPA's approval of the revisions to Idaho's SIP relating to the open burning and crop residue disposal requirements and visible emissions. The Tribe emphasized the importance of the EPA's acknowledgment in the proposal that the Idaho SIP does not apply within the exterior boundaries of the 1863 Nez Perce Reservation. The Tribe also clarified that it was not a part of the negotiations that led to the development of the 2008 SIP revision request, but that the Tribe's air quality program attended meetings in a technical assistance capacity. The Nez Perce Tribe stated that it is willing to continue to provide technical assistance to the IDEQ and looks forward to working with the IDEQ and the EPA on coordinating smoke management and burn decisions in the Clearwater airshed.

Response: The EPA acknowledges the Nez Perce Tribe's support for the EPA's approval of Idaho's SIP revision request, as well as the Tribe's continued technical support on air quality efforts. As stated in our proposal, the EPA's approval of Idaho's 2008 SIP revision request does not apply to Indian Country in Idaho, including all lands within the exterior boundaries of the Nez Perce Reservation as described in the 1863 Nez Perce Treaty. 73 FR 23162. The EPA also acknowledges the Nez Perce Tribe's role in the development of Idaho's 2008 SIP revision request.

Comment: The Montana Department of Environmental Quality (MDEQ) stated that it supports Idaho's final rules on crop residue burning and the IDEQ's efforts to control the emissions from crop residue burning. In addition, the MDEQ commended the IDEQ's efforts to establish coordination between crop residue burners and other burners to protect the NAAQS, noting that it particularly supports coordination with the Idaho/Montana Smoke Management Group. The MDEQ also noted its support of Idaho's intent to further study interstate transport issues.

Response: The EPA acknowledges the MDEQ's support of Idaho's final rules relating to the open burning of crop residue and acknowledges the importance of coordination among states and tribes in protecting air quality.

Comment: Safe Air For Everyone (SAFE) stated that, in responding to comments during State administrative proceedings on the 2008 draft SIP revision request, the IDEQ made important commitments regarding implementation of the burn permit program and that SAFE was relying on those commitments to make the SIP effective. SAFE continued that the IDEQ and SAFE had come to a mutual understanding and agreement that both the IDEQ's Response to Comments (included in Appendix E of the 2008 SIP revision request) and Appendix J of the 2008 SIP revision request are part of the SIP. SAFE requested that the EPA confirm that the IDEQ's submitted Response to Comments and Appendix J are part of the federally approved SIP and that the criteria for burn determinations included in the IDEQ's Response to Comments and Appendix J are requirements of the federally approved and federally enforceable SIP. With that understanding, SAFE stated that it fully supports the EPA's approval of the Idaho 2008 SIP revision request. If the EPA does not recognize the criteria for burn determinations in the IDEQ's Response to Comments and Appendix J as part of the federally approved and enforceable SIP, SAFE asserted that the Idaho SIP revision would not be lawful because it would not comply with the Clean Air Act and EPA's implementing regulations for the reasons discussed in SAFE's comments to the IDEQ during the state public comment period. In that event, SAFE requested that the EPA consider the comments SAFE submitted to the IDEQ during Idaho's public comment period as objections to the EPA's approval as well.

Response: In a letter dated June 11, 2008, the IDEQ stated that it had reviewed SAFE's comment letter to EPA, and that the IDEQ had submitted the Response to Comments and Appendix J with the intent that they be considered part of the Idaho 2008 SIP revision request. The IDEQ further acknowledged that, upon the EPA's approval of the Idaho 2008 SIP revision request, the 2008 SIP revision request will be federally enforceable.

The EPA agrees that both the IDEQ's Response to Comments and Appendix J are part of the 2008 SIP revision request, and, upon the EPA's approval, will be part of the federally approved and federally enforceable Idaho SIP. Our approval of the 2008 SIP revision request relies upon the statements made by the IDEQ throughout the SIP revision, including those statements made in the IDEQ Response to Comments and Appendix J, regarding how the IDEQ intends to implement its crop residue burning program. This includes statements made by the IDEQ in its Response to Comments and Appendix J relating to the criteria for making burning decisions and how the IDEQ intends to implement those criteria. As part of our approval action, the EPA is including Idaho's complete submitted 2008 SIP revision request, including the IDEQ's Response to Comments and Appendix J, in the identification of plan section of the Code of Federal Regulations at 40 CFR 52.670.

As we discussed in the proposal, the past ten years of air quality data show no monitored evidence that the burning of crop residue has led to a violation of the NAAQS. To the extent that the burning of crop residue may contribute to exceedances of the revised NAAQS for ozone and PM2.5, the provisions at IDAPA 58.01.01.617 through 623 of Idaho's new crop residue burning program adequately address those concerns by preventing crop residue burning on days when a NAAQS exceedance may occur. In addition, the IDEQ provided supporting material, including the analysis of air quality, meteorology, emissions inventory, and non-regulatory modeling to show that the crop residue burning activity in the State of Idaho is not causing nor significantly contributing to a violation of the NAAQS. Based on the IDEQ's SIP submission, including the IDEQ's Response to Comments and Appendix J, and for the reasons discussed in our proposed approval notice, we conclude that our approval of the Idaho 2008 SIP revision request will not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the CAA.

IV. Final Action

For the reasons provided above and in our proposed rule, we are approving Idaho's 2008 SIP revision request, including the revisions to allow the open burning of crop residue, and the provision addressing visible emissions.

More specifically, we are approving the 2008 SIP revision request relating to IDAPA 58.01.01.600–603, 606, 617–623, and 625 that includes both changes to the general open burning rules that were contained in the 2003 SIP revision request and changes to those rules that specifically relate to crop residue burning. We are also approving the portion of the 2003 SIP revision request relating to IDAPA 58.01.01.604, 607–610, 612, 613, 615 and 616 that was not changed by the 2008 draft SIP revision request and that was not part of the federally approved Idaho SIP due to the Court's remand and vacatur of our 2005 SIP approval of the 2003 submission. We are approving the State's submitted 2008 revisions and the unchanged 2003 submission provisions because they meet the requirements of the Clean Air Act.

As discussed in the proposal, because Idaho has not demonstrated authority to implement and enforce IDAPA Chapter 58 within ''Indian country'' as defined in 18 U.S.C. 1151,[2] this SIP approval does not extend to ''Indian country'' in Idaho. 73 FR 23162.

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 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the 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 the 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. The 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).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 16, 2008.

Elin D. Miller,

Regional Administrator, Region 10.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart N—Idaho

■ 2. Section 52.670 is amended to read as follows:

■ a. In the table in paragraph (c):

■ i. By removing ''[Idaho Administrative Procedures Act (IDAPA) Chapter 58, Rules for the Control of Air Pollution in Idaho Previously Codified at IDAPA Chapter 39 (Appendix A.3)]'' from the table heading.

■ ii. By removing the section heading ''58.01.01—Rules for the Control of Air Pollution in Idaho'' and adding in its place ''Idaho Administrative Procedures Act (IDAPA) 58.01.01—Rules for the Control of Air Pollution in Idaho''.

■ iii. By revising entries 600 through 603.

■ iv. By revising entries 606 through 610.

■ v. By revising entries 612 and 613.

■ vi. By revising entries 615 though 617.

■ vii. By adding in numerical order entries 618 though 623.

■ viii. By revising entry 625.

■ ix. By adding a section heading ''State Statutes'' and an entry for State Statutes ''Section 1 of House Bill 557, codified at Idaho Code section 39–114'' at the end of the table.

■ b. In paragraph (e) by adding an entry to the end of the table.

§ 52.670 Identification of plan.

* * * * *

(c) * * *

[2] ''Indian country'' is defined under 18 U.S.C. 1151 as: (1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (2) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Under this definition, EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation. In Idaho, Indian country includes, but is not limited to, all lands within the exterior boundaries of the Coeur d'Alene Reservation, the Duck Valley Reservation, the Reservation of the Kootenai Tribe, the Fort Hall Indian Reservation, and the Nez Perce Reservation as described in the 1863 Nez Perce Treaty.

EPA-APPROVED IDAHO REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanations
Idaho Administrative Procedures Act (IDAPA) 58.01.01—Rules for the Control of Air Pollution in Idaho				
*	*	*	*	*
600	Rules for Control of Open Burning	4/2/08	8/1/08 [Insert page number where the document begins].	Previous EPA Approval Date of 7/11/05 removed in response to 9th Circuit remand.
601	Fire Permits, Hazardous Materials and Liability.	4/2/08	8/1/08 [Insert page number where the document begins].	Previous EPA Approval Date of 7/11/05 removed in response to 9th Circuit remand.
602	Nonpreemption of Other Jurisdictions	4/2/08	8/1/08 [Insert page number where the document begins].	Previous EPA Approval Date of 7/11/05 removed in response to 9th Circuit remand.
603	General Restrictions	4/2/08, 3/21/03, 5/1/94	8/1/08 [Insert page number where the document begins].	Previous EPA Approval Date of 7/11/05 removed in response to 9th Circuit remand.
606	Categories of Allowable Burning	4/2/08	8/1/08 [Insert page number where the document begins].	Previous EPA Approval Date of 7/11/05 removed in response to 9th Circuit remand.
607	Recreational and Warming Fires	3/21/03	8/1/08 [Insert page number where the document begins].	Previous EPA Approval Date of 7/11/05 removed in response to 9th Circuit remand.
608	Weed Control Fires	5/1/94	8/1/08 [Insert page number where the document begins].	Previous EPA Approval Date of 7/11/05 removed in response to 9th Circuit remand.
609	Training Fires	3/21/03	8/1/08 [Insert page number where the document begins].	Previous EPA Approval Date of 7/11/05 removed in response to 9th Circuit remand.
610	Industrial Flares	3/21/03	8/1/08 [Insert page number where the document begins].	Previous EPA Approval Date of 7/11/05 removed in response to 9th Circuit remand.
*	*	*	*	*
612	Landfill Disposal Site Fires	3/21/03	8/1/08 [Insert page number where the document begins].	Previous EPA Approval Date of 7/11/05 removed in response to 9th Circuit remand.
613	Orchard Fires	3/21/03, 5/1/94	8/1/08 [Insert page number where the document begins].	Previous EPA Approval Date of 7/11/05 removed in response to 9th Circuit remand.
*	*	*	*	*
615	Dangerous Material Fires	3/21/03	8/1/08 [Insert page number where the document begins].	Previous EPA Approval Date of 7/11/05 removed in response to 9th Circuit remand.
616	Infectious Waste Burning	3/21/03	8/1/08 [Insert page number where the document begins].	Previous EPA Approval Date of 7/11/05 removed in response to 9th Circuit remand.
617	Crop Residue	4/2/08	8/1/08 [Insert page number where the document begins].	
618	Permit By Rule	4/2/08	8/1/08 [Insert page number where the document begins].	
619	Registration for Permit By Rule	4/2/08	8/1/08 [Insert page number where the document begins].	
620	Registration Fee	4/2/08	8/1/08 [Insert page number where the document begins].	
621	Burn Determination	4/2/08	8/1/08 [Insert page number where the document begins].	
622	General Provisions	4/2/08	8/1/08 [Insert page number where the document begins].	
623	Public Notification	4/2/08	8/1/08 [Insert page number where the document begins].	

EPA-APPROVED IDAHO REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
625	Visible Emissions	4/2/08	8/1/08 [Insert page number where the document begins].	
*	*	*	*	*
		State Statutes		
Section 1 of House Bill 557, codified at Idaho Code section 39–114.	Open Burning of Crop Residue	03/07/08	8/1/08 [Insert page number where the document begins].	

(e) * * *

EPA-APPROVED IDAHO NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES.

Name of SIP provision	Applicable geographic or non-attainment area	State submittal date	EPA approval date	Comments
*	*	*	*	*
Open Burning of Crop Residue State Implementation Plan Revision.	State-wide	5/28/08	8/1/08 [Insert page number where the document begins].	

* * * * *

[FR Doc. E8–16973 Filed 7–31–08; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[EPA–R02–OAR–2007–0553; FRL–8688–3]

Outer Continental Shelf Air Regulations Update To Include New York State Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the update of the Outer Continental Shelf (OCS) Air Regulations proposed in the **Federal Register** on March 14, 2008. Requirements applying to OCS sources located within 25 miles of States' seaward boundaries must be promulgated into part 55 and updated periodically to remain consistent with the requirements of the corresponding onshore area (COA), as mandated by section 328(a)(1) of the Clean Air Act (CAA). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources in the State of New York. The intended effect of approving the OCS requirements for the State of New York is to regulate emissions from OCS sources in accordance with the requirements onshore. The requirements discussed below are incorporated by reference into the Code of Federal Regulations and are listed in the appendix to the OCS air regulations.

DATES: *Effective Date:* This rule is effective on September 2, 2008.

This incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of September 2, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R02–OAR–2007–0553. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Region 2, 290 Broadway, New York, New York 10007.

FOR FURTHER INFORMATION CONTACT: Steven Riva, Air Programs Branch, U.S. Environmental Protection Agency, Region 2, 290 Broadway, New York, New York 10007; telephone number: (212) 637–4074; e-mail address: *riva.steven@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background Information

Throughout this document, the terms ''we,'' ''us,'' and ''our'' refer to the U.S. EPA.

On September 4, 1992, EPA promulgated 40 CFR part 55,[1] which established requirements to control air pollution from OCS sources in order to

[1] The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

attain and maintain Federal and State ambient air quality standards (AAQS) and to comply with the provisions of part C of title I of the CAA. Part 55 applies to all OCS sources offshore of the States except those located in the Gulf of Mexico west of 87.5 degrees longitude.

On March 14, 2008 (73 FR 13822), EPA proposed to approve requirements into the OCS Air Regulations pertaining to the State of New York. EPA has evaluated the proposed regulations to ensure that they are rationally related to the attainment or maintenance of Federal or State ambient air quality standards or Part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure that they are not arbitrary or capricious. 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules.

Section 328(a) of the CAA requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of States' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable rules in effect for onshore sources into part 55. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the CAA. Inclusion in the OCS rule does not imply that a rule meets the requirements of the CAA for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

II. Public Comment and EPA Response

EPA's proposed action provided a 30-day public comment period, which closed on April 14, 2008. During this period EPA received no comments on the proposed action.

III. EPA Action

In this document, EPA takes final action to incorporate the proposed changes into 40 CFR part 55. EPA is approving the proposed actions under section 328(a)(1) of the Act, 42 U.S.C. 7627. Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of States' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore.

IV. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements 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 not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant economic impact on a substantial number of small entities. This rule implements requirements specifically and explicitly set forth by the Congress in section 328 of the CAA, without the exercise of any policy discretion by EPA. These OCS rules already apply in the COA, and EPA has no evidence to suggest that these OCS rules have had a significant economic impact on a substantial number of small entities. As required by section 328 of the CAA, this action simply incorporates the existing rules in the COA. Therefore, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, and tribal governments in the aggregate; or to the private sector, of $100 million or more in any one year. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that today's final rule contains no Federal mandates that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or to the private sector in any one year. This action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132: Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a State rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of

section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175: Coordination With Indian Tribal Governments

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

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

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885 (April 23, 1997)), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

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

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

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use voluntary consensus standards (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable laws or otherwise impractical.

The EPA believes that VCS are inapplicable to this section. Today's action does not require the public to perform activities conducive to the use of VCS.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this 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). This action will be effective September 2, 2008.

K. Petition for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 30, 2008. Filing a petition for reconsideration by the Administrator of this final action 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 55

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 25, 2008.

Alan J. Steinberg,

Regional Administrator, Region 2.

■ Title 40, chapter I of the Code of Federal Regulations, is to be amended as follows:

PART 55—[AMENDED]

■ 1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the CAA (42 U.S.C. 7401, *et seq.*) as amended by Public Law 101–549.

■ 2. Section 55.14 is amended by adding new paragraphs (d)(16) and (e)(16) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of States' seaward boundaries, by State.

* * * * *

(d) * * *

(16) New York.

(i) 40 CFR part 52, subpart HH.

(ii) [Reserved]

* * * * *

(e) * * *

(16) New York.

(i) State Requirements.

(A) State of New York Requirements Applicable to OCS Sources, October 20, 2007

(B) [Reserved]

(ii) Local requirements.

(A) [Reserved]

■ 3. Amend Appendix A to part 55 by adding an entry for New York in alphabetical order to read as follows:

Appendix A to Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

* * * * *

New York

(a) State requirements.

(1) The following State of New York requirements are applicable to OCS Sources, October 20, 2007. New York Environmental Conservation Law—Department of Environmental Conservation. The following sections of Title 6, Chapter III:

Part 200. General Provisions

6 NYCRR 200.1. Definitions (effective 8/9/06)
6 NYCRR 200.2. Safeguarding Information (effective 1/16/92)
6 NYCRR 200.3. False Statement (effective 6/16/72)
6 NYCRR 200.4. Severability (effective 8/9/84)
6 NYCRR 200.5. Sealing (effective 2/22/79)
6 NYCRR 200.6. Acceptable Ambient Air Quality (effective 4/6/83)
6 NYCRR 200.7. Maintenance of Equipment (effective 2/22/79)
6 NYCRR 200.8. Conflict of Interest (effective 1/12/75)
6 NYCRR 200.9. Referenced Material (effective 1/271/07)

6 NYCRR 200.10. Federal Standards and Requirements (effective 10/20/07)

Part 201. Permits and Certificates

6 NYCRR 201–1. General Provisions (effective 7/7/96)
6 NYCRR 201–2. Definitions (effective 11/21/98)
6 NYCRR 201–3. Exemptions and Trivial Activities (effective 5/7/03)
6 NYCRR 201–4. Minor Facility Registrations (effective 7/7/96)
6 NYCRR 201–5. State Facility Permits (effective 7/7/96)
6 NYCRR 201–6. Title V Facility Permits (effective 1/18/02)
6 NYCRR 201–7. Federally Enforceable Emission Caps (effective 7/7/96)
6 NYCRR 201–8. General Permits (effective 7/7/96)

Part 202. Emissions Verification

6 NYCRR 202–1. Emissions Testing, Sampling and Analytical Determinations (effective 5/29/05)
6 NYCRR 202–2. Emission Statements (effective 5/29/05)

Part 204. NO_X Budget Trading Program

6 NYCRR 204–1. General Provisions (effective 2/25/00)
6 NYCRR 204–2. Authorized Account Representative for NO_X Budget Sources (effective 2/25/00)
6 NYCRR 204–3. Permits (effective 2/25/00)
6 NYCRR 204–4. Compliance Certification (effective 2/25/00)
6 NYCRR 204–5. Allowance Allocations (effective 2/25/00)
6 NYCRR 204–6. Allowance Tracking System (effective 2/25/00)
6 NYCRR 204–7. NO_X Allowance Transfers (effective 2/25/00)
6 NYCRR 204–8. Monitoring and Reporting (effective 2/25/00)
6 NYCRR 204–9. Individual Unit Opt-ins (effective 2/25/00)

Part 207—Control Measures for Air Pollution Episode (Effective 2/22/79)

Part 210—Emissions and Labeling Requirements for Personal Watercraft Engines

6 NYCRR 210–1. Applicability and Definitions (effective 8/8/03)
6 NYCRR 210–2. Certification and Prohibitions (effective 8/8/03)
6 NYCRR 210–3. Family Emission Limits (effective 8/8/03)
6 NYCRR 210–4. In-Use Testing and Recall (effective 8/8/03)
6 NYCRR 210–5. Warranty (effective 8/8/03)
6 NYCRR 210–6. Production-Line Testing (effective 8/8/03)
6 NYCRR 210–7. Severability (effective 8/8/03)

Part 211—General Prohibitions (Effective 8/11/83)

Part 212—General Process Emission Sources (Effective 9/22/94)

Part 215—Open Fires (Effective 6/16/72)

Part 219—Incinerators

6 NYCRR 219–1. Incineration—General Provisions (effective 10/30/02)
6 NYCRR 219–2. Municipal and Private Solid Waste Incineration Facilities (effective 5/21/05)
6 NYCRR 219–3. Infectious Waste Incineration Facilities (effective 12/31/88)
6 NYCRR 219–5. Existing Incinerators (effective 12/31/88)
6 NYCRR 219–6. Existing Incinerators—New York City, Nassau and Westchester Counties (effective 12/31/88)
6 NYCRR 219–7. Mercury Emission Limitations for Large Municipal Waste Combustors Constructed On or Before September 20, 1994 (effective 5/21/05)
6 NYCRR 219–8. Emission Guidelines and Compliance Times for Small Municipal Waste Combustion Units Constructed On or Before August 30, 1999 (effective 10/18/02)

Part 225—Fuel Consumption and Use

6 NYCRR 225–1. Fuel Composition and Use—Sulfur Limitations (effective 1/29/86)
6 NYCRR 225–2. Fuel Composition and Use—Waste Fuel (effective 11/5/84)
6 NYCRR 225–3. Fuel Composition and Use—Gasoline (effective 11/4/01)
6 NYCRR 225–4. Motor Vehicle Diesel Fuel (effective 5/8/05)

Part 226—Solvent Metal Cleaning Processes (Effective 5/7/03)

Part 227—Stationary Combustion Installations

6 NYCRR 227–1. Stationary Combustion Installations (effective 2/25/00)
6 NYCRR 227–2. Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NOX) (effective 2/11/04)
6 NYCRR 227–3. Pre-2003 Nitrogen Oxides Emissions Budget and Allowance Program (effective 3/15/99)

Part 228—Surface Coating Processes (Effective 7/23/03)

Part 229—Petroleum and Volatile Organic Liquid Storage and Transfer (Effective 4/4/93)

Part 231—New Source Review in Nonattainment Areas and Ozone Transport Region

6 NYCRR 231–1. Requirements for Emission Sources Subject to the Regulation Prior to November 15, 1992 (effective 10/15/94)
6 NYCRR 231–2. Requirements for Emission Sources Subject to the Regulation On or After November 15, 1992 (effective 5/3/00)

Part 240—Conformity to State or Federal Implementation Plans (Effective 10/22/04)

Part 243—CAIR NO_X Ozone Season Trading Program

6 NYCRR 243–1. CAIR NO_X Ozone Season Trading Program General Provisions (effective 10/19/07)
6 NYCRR 243–2. CAIR Designated Representative for CAIR NO_X Ozone Season Sources (effective 10/19/07)
6 NYCRR 243–3. Permits (effective 10/19/07)
6 NYCRR 243–5. CAIR NO_X Ozone Season Allowance Allocations (effective 10/19/07)
6 NYCRR 243–6. CAIR NO_X Ozone Season Allowance Tracking System (effective 10/19/07)
6 NYCRR 243–7. CAIR NO_X Ozone Season Allowance Transfers (effective 10/19/07)
6 NYCRR 243–8. Monitoring and Reporting (effective 10/19/07)
6 NYCRR 243–9. CAIR NO_X Ozone Season Opt-in Units (effective 10/19/07)

Part 244—CAIR NO_X Annual Trading Program

6 NYCRR 244–1. CAIR NO_X Annual Trading Program General Provisions (effective 10/19/07)
6 NYCRR 244–2. CAIR Designated Representative for CAIR NO_X Sources (effective 10/19/07)
6 NYCRR 244–3. Permits (effective 10/19/07)
6 NYCRR 244–5. CAIR NO_X Allowance Allocations (effective 10/19/07)
6 NYCRR 244–6. CAIR NO_X Allowance Tracking System (effective 10/19/07)
6 NYCRR 244–7. CAIR NO_X Allowance Transfers (effective 10/19/07)
6 NYCRR 244–8. Monitoring and Reporting (effective 10/19/07)
6 NYCRR 244–9. CAIR NO_X Opt-in Units (effective 10/19/07)

Part 245—CAIR SO_2 Trading Program

6 NYCRR 245–1. CAIR SO_2 Trading Program General Provisions (effective 10/19/07)
6 NYCRR 245–2. CAIR Designated Representative for CAIR SO_2 Sources (effective 10/19/07)
6 NYCRR 245–3. Permits (effective 10/19/07)
6 NYCRR 245–6. CAIR SO_2 Allowance Tracking System (effective 10/19/07)
6 NYCRR 245–7. CAIR SO_2 Allowance Transfers (effective 10/19/07)
6 NYCRR 245–8. Monitoring and Reporting (effective 10/19/07)
6 NYCRR 245–9. CAIR SO_2 Opt-in Units (effective 10/19/07)

* * * * *

[FR Doc. E8–17590 Filed 7–31–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Assistant Administrator of the Mitigation Directorate has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

State	City/town/county	Source of flooding	Location	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified
Unincorporated Areas of Sutter County, California Docket Nos.: FEMA–B–7472; B–7753; and B–7760				
California	Unincorporated Areas of Sutter County.	Bear River	Approximately 0.9 miles upstream of the confluence with Feather River.	*54
			At Wheatland Road	*96
California	Unincorporated Areas of Sutter County.	East Side Canal	Downstream source of the East Side Canal.	*40
			1,500 feet downstream of Catlett Road	*40
California	Unincorporated Areas of Sutter County.	Feather River	At the confluence with Sacramento River	*40
			Approximately 1.5 miles upstream of Bogue Road.	*72
California	Unincorporated Areas of Sutter County.	King Slough	Confluence with East Side Canal	*40
			1,600 feet upstream of the confluence of North King Slough.	*40
California	Unincorporated Areas of Sutter County.	Natomas Basin	Area West of Natomas East Main Drainage Canal.	*33
			Area South of Cross Canal	*33
			Area East of Sacramento River	*33
California	Unincorporated Areas of Sutter County.	North King Slough	Confluence with King Slough	*40
			3,200 feet upstream of the confluence with King Slough.	*40
California	Unincorporated Areas of Sutter County.	Yankee Slough	At the confluence with Bear River	*58
			Approximately 1.1 miles upstream of Brewer Road.	*75

* National Beodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

State	City/town/county	Source of flooding	Location	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified
ADDRESSES				
Unincorporated Areas of Sutter County				
Maps are available for inspection at Sutter County Administrators Office, 1160 Civic Center Boulevard, Yuba City, CA 95993.				
City of Troy, Michigan Docket No.: FEMA–B–7749				
Michigan	City of Troy	Hawthorn Drain	Downstream side of Dequindre Road	+629
			Approximately 750 feet upstream of Minnesota Road.	+635
Michigan	City of Troy	Shanahan Drain (West of Henry Graham Drain).	Inlet to Henry Graham Drain	+639
			Downstream side of John R Road	+644
Michigan	City of Troy	Spencer-Barnard Drain (East).	Downstream side of Dequindre Road	+630
			Upstream side of Minnesota Road	+632
Michigan	City of Troy	Spencer-Barnard Drain (West).	Upstream side of John R Road	+639
			Approximately 1,800 feet upstream of Maple Road.	+662

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Troy

Maps are available for inspection at 500 West Big Beaver Road, Troy, MI 48084.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Marion County, Tennessee, and Incorporated Areas Docket No.: FEMA–B–7756			
Pryor Cove Branch	Confluence with Standifer Branch	+640	Town of Jasper.
	Confluence with West Fork Pryor Cove Branch	+714	
Sequatchie River	At confluence with Tennessee River	+616	Town of Jasper.
	Approximately 575 feet upstream of U.S. Highway 41	+620	
Standifer Branch	At confluence of Town Creek	+619	Town of Jasper.
	At confluence of Pryor Cove Branch	+639	
West Fork Pryor Cove Branch	At confluence with Pryor Cove Branch	+714	Town of Jasper.
	Approximately 250 feet upstream of Pryor Cove Road	+786	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Town of Jasper

Maps are available for inspection at 4460 Main Street, Jasper, TN 37347.

Adams County, Washington, and Incorporated Areas Docket No.: FEMA–B–7755			
Paha Creek	Approximately 1400 feet downstream of Division Street Bridge.	+1,790	City of Ritzville, Unincorporated Areas of Adams County.
	Approximately 800 feet upstream of Fairgrounds footbridge.	+1,806	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected

ADDRESSES

City of Ritzville

Maps are available for inspection at 216 E. Main Avenue, Ritzville, WA 99169.

Unincorporated Areas of Adams County

Maps are available for inspection at 210 W. Alder, Ritzville, WA 99169.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: July 23, 2008.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–17681 Filed 7–31–08; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 604

[Docket No. FTA–2005–22657]

RIN 2132–AA85

Charter Service

AGENCY: Federal Transit Administration, DOT.

ACTION: Final rule; response to petitions for reconsideration and amendments.

SUMMARY: This document disposes of the petitions for reconsideration filed in response to the Federal Transit Administration's (FTA) final rule on charter service published on January 14, 2008. This notice also corrects the final rule by adding an authority citation, revises Appendix B and Appendix C, and corrects Appendix D, which should have appeared in the final rule as a matrix.

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

ADDRESSES: A copy of this rule and comments and material received from the public, as well as any documents indicated in the preamble as being available in the docket, are part of docket FTA–2005–22657 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave., SE., West Building Ground Floor, Room W12–140, Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may retrieve the rule and comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.* Enter docket number 22657 in the search field. The FDMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may also reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's Web page at: *http://www.gpoaccess.gov/fr/index.html.*

FOR FURTHER INFORMATION CONTACT: Crystal Frederick, Ombudsman for Charter Services, Federal Transit Administration, 1200 New Jersey Ave., SE., Room E54–410, Washington, DC 20590, (202) 366–4063 or *ombudsman.charterservice@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Federal Transit Administration (FTA), on January 14, 2008, issued a final rule amending 49 CFR part 604 (73 FR 2326), which governs the provision of charter service by recipients of Federal funds from FTA. FTA utilized negotiated rulemaking procedures to issue the new rule based on direction contained in the Joint Explanatory Statement of the Committee of Conference for section 3023(d), ''Condition on Charter Bus Transportation Service'' of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users of 2005 (SAFETEA–LU). The final rule became effective on April 30, 2008, and clarified existing requirements; set out a new definition of ''charter service''; allowed for electronic registration of private charter providers, which replaced the old ''willing and able'' process; included a new provision allowing private charter operators to request a cease and desist order; and established more detailed complaint, hearing, and appeal procedures. On February 14, 2008, FTA received four petitions for reconsideration for certain provisions contained in the final rule.

Issues Presented in the Petitions for Reconsideration

Each of the following organizations filed a petition with FTA for reconsideration of the final rule: Coach USA, Inc., American Bus Association, Inc. (ABA), Private Sector Participants of Charter Bus Negotiated Rulemaking Advisory Committee (''the Coalition'') (which includes the ABA, California Bus Association, Coach America, Coach USA, National School Transportation Association, Northwest Motorcoach Association, Taxicab, Limousine and Paratransit Association, Trailways, and United Motorcoach Association), and Adirondack Trailways (including Pine Hill Trailways and New York Trailways).

Each petition for reconsideration focused primarily on the final rule's exemption for private charter operators. The final rule states:

> (c) The requirements of this part shall not apply to private charter operators that receive, directly or indirectly, Federal financial assistance under section 3038 of the Transportation Equity Act for the 21st Century, as amended, or to the non-FTA funded activities of private charter operators that receive, directly or indirectly, FTA financial assistance under any of the following programs: 49 U.S.C. 5307, 49 U.S.C. 5309, 49 U.S.C. 5310, 49 U.S.C. 5311, 49 U.S.C. 5316, or 49 U.S.C. 5317.

49 CFR 604.2(c)

Coach USA asserts that ''while purporting to 'clarify' the rule, FTA introduced into its final rule at section 604.2(c) the undefined limitation that the rules would not apply to 'non-FTA funded activities of private charter operators that receive, directly or indirectly, FTA financial assistance' under a variety of specified Federal programs. By virtue of the addition of

these new regulatory terms, a private charter operator must now determine what is, and what is not, an 'FTA funded activity.' Under the proposed rule, by contrast, no such determination was required.'' Coach USA encourages FTA to return to the notice of proposed rulemaking (NPRM) language for this exemption. The ABA expressed similar concerns in its petition and noted that the answers provided in Appendix C ''are themselves unclear, in conflict, and do not cover every possible funding scenario.'' Further, ABA also urged FTA to return to the NPRM language except ''where a private operator has acquired a vehicle with 80% or more Federal funding * * * that federally-funded vehicle may not be used to provide charter bus service unless one of the exceptions applies.'' ABA also states that FTA did not properly support the change in the exemption from the NPRM to the final rule.

Adirondack Trailways expressed strong support for ABA's position on this issue and noted that ''the charter regulations can be interpreted in a way that would prevent a private operator who performs commuter work Monday through Friday from operating a charter on Saturday or Sunday.'' The Coalition did not address this particular issue, but raised several other issues.

The Coalition raised concerns about the final rule's provisions regarding the expansion of the emergency exemption from three days to forty-five days; the expansion of the hardship exception to small urbanized areas; comments on Petitions to the Administrator; exclusion of university shuttle bus service; and the remedy matrix in Appendix D.

1. Emergency Exemption

The final rule allows a public transit agency to provide charter service in emergency situations for forty-five days after which the transit agency is required to comply with 49 CFR Part 601 Subpart D—FTA's Emergency Relief docket. The Coalition believes this change in the final rule (the NPRM proposed to allow transit agencies to provide emergency service for three days) is unnecessary because ''it is extremely rare that emergency conditions requiring transit bus charter service will last for one and one-half months.''

2. Expansion of Hardship Exception

Regarding the expansion of the hardship exception to small urban areas, the final rule allows small urban areas under 200,000 in population to petition the Administrator for an exception if a private carrier's deadhead time exceeds total trip time. The Coalition opposes this expansion because ''there is still no evidence in the record other than anecdotes that this exception is necessary * * * and this exception should be withdrawn from the rule or at least limited to rural areas only.''

3. Petitions to the Administrator

The Coalition also expressed concern regarding the final rule's requirements for Petitions to the Administrator. The final rule allows a transit agency to petition the Administrator for an exception to the charter regulation for events of regional or national significance, hardship, or discretion. The Coalition noted that ''there is no provision for the petition itself to be noticed in the docket, and no opportunity for private operators to comment on the representations and certification made by the recipient in the petition.'' The Coalition requests that such petitions be published in the docket and interested parties be given the opportunity to comment on the requested exceptions before the Administrator issues a decision.

4. University Shuttle Service

Regarding university shuttle service, the final rule contains an appendix with a number of questions and answers. Question 26 in the appendix asks whether university shuttle service is charter service. The answer to question 26 states that regularly scheduled university service does not meet the definition of charter service even though it is service provided at the request of a third party, for an exclusive group, and for a negotiated price. The Coalition expressed concerns about the answer to question 26 because ''transit agencies may view this guidance as a license to enter service contracts with universities to provide campus service paid for by the university as long as the transit agency publishes the schedule, calls it a fixed route and allows the occasional member of the public to ride—even though it is really the university directing the terms of the service.'' Thus, the Coalition asks for question 26 to be stricken from the appendices, or, in the alternative, for FTA to provide a counter-example of when university shuttle service would be considered charter service.

Coach USA also commented on question 26 and asserted that ''the line between legitimate transit service and charter service is crossed when the transit agency enters a contract with the university or college that provides for a subsidy and, as is typical, also specifies key terms of the service (e.g., fares, bus stop locations, schedules based on academic calendar, times of the day served, special or no fares for members of the university community, etc.) and specifies routes that are tailored to meet unique university requirements, such as on-campus shuttle routes or shuttles between a campus and nearby stores or other off-campus facilities frequented by students.

5. Remedy Matrix in Appendix D

Finally, the Coalition also raised concerns about the inclusion of Appendix D, which was a matrix of potential remedies that may be imposed for a violation of the new charter service regulation. According to the Coalition, the figures contained in Appendix D are ''undecipherable'' and it requests that the appendix be stricken from the final rule.

Response to Petitions for Reconsideration

1. Private Charter Exemption

The Coalition raised concerns about FTA adding language to the private charter operator exemption and asserted that FTA's changes are not supported by the record. In the docket for this rulemaking are several comments asking for clarification of the private charter exemption. Some comments confused the many private not-for-profit agencies that provide public transit service in rural areas with the private charter operators. Other comments complained that FTA was treating recipients of Federal funds differently. In the final rule preamble, FTA responded by stating: ''FTA's Over-the-Road Bus Program is specifically designed to provide Federal assistance to private charter operators so that they can retrofit their vehicles to make them accessible and comply with the Americans with Disabilities Act. This is a federally sanctioned activity, and, thus, to apply the charter regulations would run counter to this Federal program. The same argument also holds true for those private charter operators that receive Federal funds under 49 U.S.C. section 5311(f), which provides a limited amount of Federal support for running routes in rural areas.'' Still other comments raised concerns about transit agencies' ability to contract with private providers to provide public transportation. In response to these concerns, FTA noted in the final rule that ''public transit agencies may enter into a contract with private charter operators to purchase transportation services using the private charter operator's vehicles. The fact that a private charter operator contracts with a public transit agency should not have

the unintended consequence of preventing the operator from using those vehicles, or other vehicles in its fleet, to provide charter service.'' FTA also noted in response to comments that ''if a private charter operator provides fixed route public transportation using federally funded buses or vans under contract to a transit agency or other public entity such as a State Department of Transportation, the private charter operator stands in the shoes of the transit agency and is subject to the charter service regulations.'' But, FTA made sure to note that the ''private charter operator, however, would not be prevented from using other vehicles in its private fleet to provide charter service.''

Thus, while FTA understands the Coalition's concerns regarding the amended language in the final rule, FTA's changes in the final rule are well-supported by the record. Even so, since the ABA and Coach USA focus on questions nine and ten in Appendix C, FTA will revise those questions to better reflect FTA's intent with respect to the private charter exemption contained in 49 CFR 604.2. To be clear, the charter rules do not apply to private charter operators when providing charter services using private charter vehicles not under contract with a public transit agency. The charter regulations apply to private charter providers when providing public transportation services under contract with a transit agency receiving Federal funds whether using privately owned vehicles or federally funded vehicles. This means a private charter operator, when providing public transportation in accordance with the terms of its contract with a public transit agency, must abide by the charter regulations for those vehicles engaged in public transportation services. For example, XYZ Charter Company contracts with ABC transit agency to provide fixed route service from 7 a.m. to 6:30 p.m. Monday through Friday. At 6:31 p.m. each night, XYZ Charter Company's privately owned vehicles are available for charter and such service is not subject to the charter regulations.

Moreover, if the Garden Club asks XYZ Charter Company to perform a charter on Thursday from 10 a.m. until 12 p.m., XYC Charter Company would have to abide by the charter service regulations if it were to use the vehicles in its fleet assigned to the provision of transit service because the event occurs during the period the private charter operator has contracted with the transit agency to provide public transportation whether the service is provided by privately owned vehicles or federally funded vehicles. XYC Charter Company could, however, provide charter service to the Garden Club using other privately owned vehicles in its fleet that were not required to be used under the transit contract.

Another example involves service provided under a turn-key contract, where the private operator provides and operates a dedicated transit fleet. For the transit part of its business, the private operator is in effect the transit operator, and is subject to the charter rule for the vehicles in that transit fleet. The charter rule would not apply, however, to other aspects of that private provider's business. FTA also recognizes that a private operator may use vehicles in its fleet interchangeably. So long as the operator is providing the number, type, and quality of vehicles contractually required to be provided exclusively for transit use, and is not using FTA funds to cross-subsidize private charter service, the private operator may manage its fleet according to best business practices. Stated differently, the charter rule is only applicable to the actual transit service provided by the private operator. As stated in 49 CFR 605.2(c), the rule does not apply to the non-FTA funded activities of private charter operators. The intent of this provision was to isolate the impacts of the charter rule on private operators to those instances where they stood in the shoes of a transit agency.

Related to the above issue is the issue of receipt of Federal funds used to offset the costs of preventive maintenance. The use of Federal funds to offset preventive maintenance costs does not trigger application of the charter rule. Recipients of non-urbanized area formula program (49 U.S.C. 5311(f)) funds are constrained by the charter rule only when providing public transportation. Non-FTA funded vehicles that are maintained in FTA funded facilities also do not become subject to the charter regulations. Similarly, incidental use of FTA funded facilities such as stops or terminals or joint information systems, during charter, tour, or intercity operations, does not mean the charter regulations apply to the equipment in the private operator's fleet.

Finally, when a private operator receives FTA funds through the capital cost of contracting, the only expenses attributed to FTA are those related to the transit service provided. The principle of the capital cost of contracting is to pay for the capital portion of the privately owned assets used in public transportation (including a share of preventive maintenance costs attributable to the use of the vehicle in the contracted transit service). When a private operator uses that same privately owed vehicle in non-FTA funded service, such as charter service, the preventive maintenance and capital depreciation are not paid by FTA, so the charter rule does not apply.

Accordingly, the Coalition's request to revert to the language of the NPRM is denied, but FTA will provide further clarification to the questions and answers on this topic in Appendix C.

2. Expansion of the Emergency Exemption From 3 to 45 Days

The expansion of the emergency exemption from three to 45 days is described by the Coalition as ''unnecessarily generous'' and ''could allow agencies to avoid reporting requirements.'' The Coalition requests that FTA return to the three day time period proposed in the NPRM. This request for reconsideration fails to comply with the provisions of 49 CFR 601.34 because it fails to state ''why compliance with the final rule is not practicable, is unreasonable, or is not in the public interest.'' Even so, to support its claim, the Coalition asserts that ''there is nothing in the record supporting a 45-day exemption from the normal reporting requirement.''

The record for these proceedings includes not only the final rule and its preamble, but also all of the comments. In the final rule FTA specifically noted that ''considering the concerns raised, we have decided to amend this section to allow for transit agencies to respond to emergencies * * * but it is necessary to provide a time limitation, and so, we are changing the three day limit to 45 days.'' The time change directly responds to the comments FTA received indicating concern that three days was not sufficient time to allow for transit agencies to respond to emergencies. Specifically, several comments noted that the response to Hurricanes Katrina and Rita took much longer than three days. Thus, FTA chose a 45-day limit because it would allow transit agencies to focus on providing the needed support during emergencies without having to report back to FTA in a short time frame. Accordingly, the coalition's request to return to the three day period proposed in the NPRM is denied.

3. Expansion of Hardship Exception to Small Urbanized Areas

With respect to FTA's expansion of the hardship exception to small urbanized areas, the Coalition asserts there is ''still no evidence in the record other than anecdotes that this [hardship] exception is necessary'' and asks that ''the exception be withdrawn from the

final rule or at least limited to rural areas only.'' This request for reconsideration fails to comply with the provisions of 49 CFR 601.34 because it fails to state ''why compliance with the final rule is not practicable, is unreasonable, or is not in the public interest.'' Even so, while the Coalition does not see a need for this exception, FTA was convinced by the comments received that rural providers have limited options and there may be instances when a transit agency will need to step in to fulfill community needs. Based on the comments received, FTA also determined that the exception could be safely expanded to areas fewer than 200,000 in population because those areas also tend to have fewer private charter choices.

Further, the Coalition incorrectly states the exception. In the final rule, FTA removed the minimum trip duration requirement. Now, the only way to qualify for a hardship exception is for the deadhead time to exceed total trip time. This change was made as an acknowledgement that many companies impose minimum trip durations as a sound business practice and allowing transit agencies to provide requested charter service simply because a private provider imposes minimum trip durations could work a disservice upon small, rural private providers. Accordingly, the Coalition's request to remove the hardship exception is denied.

4. Comments on Petitions to the Administrator

The Coalition states in its petition that ''there is no provision for the petition itself to be noticed in the docket, and no opportunity for private operators to comment on the representations and certifications made by the recipient in the petition * * *.'' The Coalition requests that FTA formally establish a comment period for Petitions to the Administrator. This request for reconsideration fails to comply with the provisions of 49 CFR Section 601.34 because it fails to state ''why compliance with the final rule is not practicable, is unreasonable, or is not in the public interest.'' Even so, the preamble to the final rule specifically states ''in response to the private charter operators'' comments, we note the establishment of a 'Petitions to the Administrator' docket. Private charter operators are able to view requests through this web site. * * *'' Further, FTA routinely posts these petitions in the docket (FTA–2007–0022) at *http://www.regulations.gov,* which allows registered charter providers to comment on the petition.

FTA also noted in the preamble to the final rule that if a registered charter operator believes that a petition egregiously misstates facts, he or she may bring that to the attention of the ombudsman for charter service. While the final rule does not formally set a comment period for Petitions to the Administrator, there is a mechanism in place for registered charter providers to review petitions submitted to FTA and bring concerns to the agency's attention. Accordingly, the Coalition's request for a formal comment period for Petitions to the Administrator is denied.

5. Exclusion of Regular University Shuttle Bus Service

The questions and answers provided in Appendix C to the final rule state that regular shuttle service subsidized by a university is not charter. The Coalition argues that ''much shuttle service provided by a transit agency to a university, where the university determines the routes, the schedule is adjusted according to the university's calendar, and the university pays the fares for all of the students, faculty and staff riding the service (and charges the students a transportation or activity fee) could be considered charter service.'' The Coalition requests that the question and answer pertaining to university service be removed or revised. This request for reconsideration fails to comply with the provisions of 49 CFR 601.34 because it fails to state ''why compliance with the final rule is not practicable, is unreasonable, or is not in the public interest.'' Even so, when drafting the final rule FTA was very cognizant of the Coalitions' concerns regarding shuttle service to universities. FTA determined that regular shuttle service, even service that is designed to meet the needs of students during the week, is not charter because the service is provided on a regular and continuing basis as part of the transit system.

That being said, FTA recognizes that the question and answer regarding university shuttle service could be read to mean that all shuttle service to universities is not charter, which is not true. Shuttle service to events or functions of a limited duration or that occur on an irregular basis and that is subsidized by the university is charter. Further, on-campus shuttle routes provided for the exclusive use of students and faculty and not connected to a transit system's routes could also be charter. Thus, FTA will revise the question and answer regarding university shuttle service to make clear that certain service to a university could be charter.

6. Remedy Matrix in Appendix D

The Coalition noted in its petition that the ''figures in Appendix D matrix are not explained and are undecipherable.'' The Coalition urges FTA to remove Appendix D altogether. This request for reconsideration fails to comply with the provisions of 49 CFR 601.34 because it fails to state ''why compliance with the final rule is not practicable, is unreasonable, or is not in the public interest.'' Even so, in printing the final rule, the **Federal Register** changed the original ''matrix'' to a table. By this notice, FTA corrects Appendix D to reflect a matrix of potential remedies for a violation of the charter service regulations.

7. Revision to Appendix B

This notice also provides additional guidance to affected parties regarding what FTA may consider when determining whether a party has acted in ''bad faith.'' Currently, Appendix B defines bad faith as ''actual or constructive fraud or a design to mislead or deceive another or a neglect or refusal to fulfill a duty or contractual obligation.'' In addition, to this definition, FTA will also consider the time it takes for a registered charter provider to contact a customer or provide a customer with a reasonable quote. It is not reasonable for a registered charter provider to wait to contact the customer until the event is only a few weeks away. It is also not reasonable for a registered charter provider to delay providing a customer with a reasonable price quote for the requested charter service. Thus, it is FTA's intention to review situations in which the registered charter provider delays either contacting the customer or providing a reasonable price quote to the customer.

Additionally, since the rule's effective date, some registered charter providers have provided quotes that include several hours of deadhead time for a two or three hour around-the-town charter trip. Such a quote is not reasonable given the fact that the customer should not have to pay for inordinate hours of deadhead time in order to receive service. Further, such actions seem unreasonable if the transit agency is able to provide the trip because there are no local private charter operators interested in providing the trip.

8. Revision to Appendix C

In response to the many questions FTA received regarding its final rule, we have revised Appendix C to provide additional guidance regarding issues that seem most important to affected

parties. Thus, FTA added several new questions and answers and revised some of the old questions and answers to add more clarity to certain issues. The new Appendix C incorporates, as appropriate, and replaces the old Appendix C.

9. Authority Citation Correction

In the final rule published January 14, 2008, the authority citation for part 604 was inadvertently omitted from the text of the regulation. This notice corrects that omission.

List of Subjects in 49 CFR Part 604

Charter service.

■ Accordingly, 49 CFR part 604 is amended as follows:

■ 1. Add the following authority citation for part 604 to read as follows:

Authority: 49 U.S.C. 5323(d): 3023(d), Pub. L. 109–59; 49 CFR 1.51.

■ 2. Revise Appendix B to part 604 to read as follows:

Appendix B to Part 604—Reasons for Removal

The following is guidance on the terms contained in section 604.26(d) concerning reasons for which FTA may remove a registered charter provider or a qualified human service organization from the FTA charter registration Web site.

What is bad faith?

Bad faith is the actual or constructive fraud or a design to mislead or deceive another or a neglect or refusal to fulfill a duty or contractual obligation. It is not an honest mistake. Black's Law Dictionary, Revised Fourth Edition, West Publishing Company, St. Paul, Minn., 1968.

For example, it would be bad faith for a registered charter provider to respond to a recipient's notification to registered charter providers of a charter service opportunity stating that it would provide the service with no actual intent to perform the charter service. It would also be bad faith if the registered charter provider fails to contact the customer or provide a quote for charter service within a reasonable time. Typically, if a registered charter provider fails to contact a customer or fails to provide a price quote to the customer at least 14 business days before an event, then FTA may remove the registered charter provider from the registration Web site, which would allow a transit agency to step back in to provide the service because the registered charter provider's response to the email would no longer be effective because it is not registered.

Further, it would be bad faith for a registered charter provider to submit a quote for charter services knowing that the price is three to four times higher because of the distance the registered charter provider must travel (deadhead time). In those situations, FTA may interpret such quotes as bad faith because they appear to be designed to prevent the local transit agency from providing the service.

On the other hand, FTA would not interpret an honest mistake of fact as bad faith. For example, if a registered charter provider fails to provide charter service in response to a recipient's notification when it honestly mistook the date, place or time the service was to be provided. It would not be bad faith if the registered charter provider responded affirmatively to the email notification sent by the public transit agency, but then later learned it could not perform the service and provided the transit agency reasonable notice of its changed circumstances.

What is fraud?

Fraud is the suggestion or assertion of a fact that is not true, by one who has no reasonable ground for believing it to be true; the suppression of a fact by one who is bound to disclose it; one who gives information of other facts which are likely to mislead; or a promise made without any intention of performing it. Black's Law Dictionary, Revised Fourth Edition, West Publishing Company, St. Paul, Minn., 1968.

Examples of fraud include but are not limited to: (1) A registered charter provider indicates that it has a current state or Federal safety certification when it knows that it does not in fact have one; (2) a broker that owns no charter vehicles registers as a registered charter provider; or (3) a qualified human service organization represents that its serves the needs of the elderly, persons with disabilities, or lower-income individuals, but, in fact, only serves those populations tangentially.

What is a lapse of insurance?

A lapse of insurance occurs when there is no policy of insurance is in place. This may occur when there has been default in payment of premiums on an insurance policy and the policy is no longer in force. In addition, no other policy of insurance has taken its place. Black's Law Dictionary, Revised Fourth Edition, West Publishing Company, St. Paul, Minn., 1968.

What is a lapse of other documentation?

A lapse of other documentation means for example, but is not limited to, failure to have or loss or revocation of business license, operating authority, failure to notify of current company name, address, phone number, email address and facsimile number, failure to have a current state or Federal safety certification, or failure to provide accurate Federal or state motor carrier identifying number. Black's Law Dictionary, Revised Fourth Edition, West Publishing Company, St. Paul, Minn., 1968.

What is a complaint that does not state a claim that warrants an investigation or further action by FTA?

A complaint is a document describing a specific instance that allegedly constitutes a violation of the charter service regulations set forth in 49 CFR 604.28. More than one complaint may be contained in the same document. A complaint does not state a claim that warrants investigation when the allegations made in the complaint, without considering any extraneous material or matter, do not raise a genuine issue as to any material question of fact, and based on the undisputed facts stated in the complaint, there is no violation of the charter service statute or regulation as a matter of law. Based on Federal Rules of Civil Procedure, Rule 56(c).

Examples of complaints that would not warrant an investigation or further action by FTA include but are not limited to: (1) A complaint against a public transit agency that does not receive FTA funding; (2) a complaint brought against a public transit agency by a private charter operator that is neither a registered charter provider nor its duly authorized representative; (3) a complaint that gives no information as to when or where the alleged prohibited charter service took place; or (4) a complaint filed solely for the purpose of harassing the public transit agency.

■ 3. Revise Appendix C to part 604 to read as follows:

Appendix C to Part 604—Frequently Asked Questions

(a) Applicability (49 CFR Section 604.2)

(1) Q: If the requirements of the charter rule are not applicable to me for a particular service I provide, do I have to report that service in my quarterly report?

A: No. If the service you propose to provide meets one of the exemptions contained in this section, you do not have to report the service in your quarterly report.

(2) Q: If I receive funds under 49 U.S.C. Sections 5310, 5311, 5316, or 5317, may I provide charter service for any purpose?

A: No. You may only provide charter service for ''program purposes,'' which is defined in this regulation as ''transportation that serves the needs of either human service agencies or targeted populations (elderly, individuals with disabilities, and/or low income individuals) * * *'' 49 CFR Section 604.2(e). Thus, your service only qualifies for the exemption contained in this section if the service is designed to serve the needs of targeted populations. Charter service provided to a group, however, that includes individuals who are only incidentally members of those targeted populations, is not ''for program purposes'' and must meet the requirements of the rule (for example, an individual chartering a vehicle to take his relatives including elderly aunts and a cousin who is a disabled veteran to a family reunion).

(3) Q: If I am providing service for program purposes under one of the FTA programs listed in 604.2.(e), do the human service organizations have to register on the FTA Charter Registration Web site?

A: No. Because the service is exempt from the charter regulations, the organization does not have to register on the FTA Charter Registration Web site.

(4) Q: What if there is an emergency such as an apartment fire or tanker truck spill that requires an immediate evacuation, but the President, Governor, or Mayor never declares it as an emergency? Can a transit agency still assist in the evacuation efforts?

A: Yes. One part of the emergency exemption is designed to allow transit

agencies to participate in emergency situations without worrying about complying with the charter regulations. Since transit agencies are often uniquely positioned to respond to such emergencies, the charter regulations do not apply. This is true whether or not the emergency is officially declared.

(5) Q: Do emergency situations involve requests from the Secret Service or the police department to transport its employees?

A. Generally no. Transporting the Secret Service or police officers for non-emergency preparedness or planning exercises does not qualify for the exemption under this section. In addition, if the Secret Service or the police department requests that a transit agency provide service when there is no immediate emergency, then the transit agency must comply with the charter service regulations.

(6) Q: Can a transit agency provide transportation to transit employees for an event such as the funeral of a transit employee or the transit agency's annual picnic?

A: Yes. These events do not fall within the definition of charter, because while the service is exclusive, it is not provided at the request of a third party and it is not at a negotiated price. Furthermore, a transit agency transporting its own employees to events sponsored by the transit agency for employee morale purposes or to events directly related to internal employee relations such as a funeral of an employee, or to the transit agency's picnic, is paying for these services as part of the transit agency's own administrative overhead.

(7) Q: Is sightseeing service considered to be charter?

A: ''Sightseeing'' is a different type of service than charter service. ''Sightseeing'' service is regularly scheduled round trip service to see the sights, which is often accompanied by a narrative guide and is open to the public for a set price. Public transit agencies may not provide sightseeing service with federally funded assets or assistance because it falls outside the definition of ''public transportation'' under 49 U.S.C. Section 5302(a) (10), unless FTA provides written concurrence for that service as an approved incidental use. While, in general, ''sightseeing'' service does not constitute charter service, ''sightseeing'' service that also meets the definition of charter service would be prohibited, even as an incidental use.

(8) Q: If a private provider receives Federal funds from one of the listed programs in this section, does that mean the private provider cannot use its privately owned equipment to provide charter service?

A: No. A private provider may still provide charter services even though it receives Federal funds under one of the programs listed in this section. The charter regulations only apply to a private provider during the time period when it is providing public transportation services under contract with a public transit agency.

(9) Q: What does FTA mean by the phrase ''non-FTA funded activities''?

A: Non-FTA funded activities are those activities that are not provided under contract or other arrangement with a public transit agency using FTA funds.

(10) Q: How does a private provider know whether an activity is FTA-funded or not?

A: The private provider should refer to the contract with the public transit agency to understand the services that are funded with Federal dollars.

(11) Q: What if the service is being provided under a capital cost of contracting scenario?

A: When a private operator receives FTA funds through capital cost of contracting, the only expenses attributed to FTA are those related to the transit service provided. The principle of capital cost of contracting is to pay for the capital portion of the privately owned assets used in public transportation (including a share of preventive maintenance costs attributable to the use of the vehicle in the contracted transit service). When a private operator uses that same privately owed vehicle in non-FTA funded service, such as charter service, the preventive maintenance and capital depreciation are not paid by FTA, so the charter rule does not apply.

(12) Q: What if the service is provided under a turn-key scenario?

A: To the extent the private charter provider is standing in the shoes of the public transit agency, the charter rules apply. Under a turn-key contract, where the private operator provides and operates a dedicated transit fleet, then the private provider must abide by the charter regulations for the transit part of its business. The charter rule would not apply, however, to other aspects of that private provider's business. FTA also recognizes that a private operator may use vehicles in its fleet interchangeably. So long as the operator is providing the number, type, and quality of vehicles contractually required to be provided exclusively for transit use and is not using FTA funds to cross-subsidize private charter service, the private operator may manage its fleet according to best business practice.

(13) Q: Does FTA's rule prohibit a private provider from providing charter service when its privately owned vehicles are not engaged in providing public transportation?

A: No. The charter rule is only applicable to the actual public transit service provided by the private operator. As stated in 49 CFR 604.2(c), the rule does not apply to the non-FTA funded activities of private charter operators. The intent of this provision was to isolate the impacts of the charter rule on private operators to those instances where they stood in the shoes of a transit agency.

(14) Q: May a private provider use vehicles whose acquisition was federally funded to provide private charter services?

A: It depends. A private provider, who is a sub-recipient or sub-grantee, when not engaged in providing public transit using federally funded vehicles, may provide charter services using federally funded vehicles only in conformance with the charter regulations. Vehicles, whose only federal funding was for accessibility equipment, are not considered to be federally funded vehicles in this context. In other words, vehicles, whose lifts are only funded under FTA programs, may be used in charter service.

(15) Q: May a public transit agency provide ''seasonal service'' (e.g., service May through September for the summer beach season)?

A: ''Seasonal service'' that is regular and continuing, available to the public, and controlled by the public transit agency meets the definition of public transportation and is not charter service. The service should have a regular schedule and be planned in the same manner as all the other routes, except that it is run only during the periods when there is sufficient demand to justify public transit service; for example, the winter ski season or summer beach season. ''Seasonal service'' is distinguishable from charter service provided for a special event or function that occurs on an irregular basis or for a limited duration, because the seasonal transit service is regular and continuing and the demand for service is not triggered by an event or function. In addition, ''seasonal service'' is generally more than a month or two, and the schedule is consistent from year to year, based on calendar or climate, rather than being scheduled around a specific event.

(b) Definitions (49 CFR Section 604.3)

(16) Q: The definition of charter service does not include demand response services, but what happens if a group of individuals request demand response service?

A: Demand response trips provide service from multiple origins to a single destination, a single origin to multiple destinations, or even multiple origins to multiple destinations. These types of trips are considered demand response transit service, not charter service, because even though a human service agency pays for the transportation of its clients, trips are scheduled and routed for the individuals in the group. Service to individuals can be identified by vehicle routing that includes multiple origins, multiple destinations, or both, based on the needs of individual members of the group, rather than the group as a whole. For example, demand response service that takes all of the members of a group home on an annual excursion to a baseball game. Some sponsored trips carried out as part of a Coordinated Human Services Transportation Plan, such as trips for Head Start, assisted living centers, or sheltered workshops may even be provided on an exclusive basis where clients of a particular agency cannot be mixed with members of the general public or clients of other agencies for safety or other reasons specific to the needs of the human service clients.

(17) Q: Is it charter if a demand response transit service carries a group of individuals with disabilities from a single origin to a single destination on a regular basis?

A: No. Daily subscription trips between a group living facility for persons with developmental disabilities to a sheltered workshop where the individuals work, or weekly trips from the group home to a recreation center is ''special transportation'' and not considered charter service. These trips are regular and continuous and do not meet the definition of charter.

(18) Q: If a third party requests charter service for the exclusive use of a bus or van, but the transit agency provides the service free of charge, is it charter?

A: No. The definition of charter service under 49 CFR Section 604.3(c) (1), requires a negotiated price, which implies an exchange of money. Thus, free service does not meet the negotiated price requirement. Transit agencies should note, however, that a negotiated price could be the regular fixed route fare or when a third party indirectly pays for the regular fare.

(19) Q: If a transit agency accepts a subsidy for providing shuttle service for an entire baseball season, is that charter?

A: Yes. Even though there are many baseball games over several months, the service is still to an event or function on an irregular basis or for a limited duration for which a third party pays in whole or in part. In order to provide the service, a transit agency must first provide notice to registered charter providers.

(20) Q: If a transit agency contracts with a third party to provide free shuttle service during football games for persons with disabilities, is that charter?

A: Yes. Even though the service is for persons with disabilities, the transit agency receives payment from a third party for an event or function that occurs on an irregular basis or for a limited duration. In order for a transit agency to provide the service, it must provide notice to the list of registered charter providers first.

(21) Q: What if a business park pays the transit agency to add an additional stop on its fixed route to include the business park, is that charter?

A: No. The service is not to an event or function and it does not occur on an irregular basis or for a limited duration.

(22) Q: What if a university pays the transit agency to expand its regular fixed route to include stops on the campus, is that charter?

A: No. The service is not to an event or function and it does not occur on an irregular basis or for a limited duration.

(23) Q: What if a university pays the transit agency to provide shuttle service that does not connect to the transit agency's regular routes, is that charter?

A: Yes. The service is provided at the request of a third party, the university, for the exclusive use of a bus or van by the university students and faculty for a negotiated price.

(24) Q: What if the university pays the transit agency to provide shuttle service to football games and graduation, is that charter?

A: Yes. The service is to an event or function that occurs on an irregular basis or for a limited duration. As such, in order to provide the service, a transit agency must provide notice to the list of registered charter providers.

(25) Q: What happens if a transit agency does not have fixed route service to determine whether the fare charged is a premium fare?

A: A transit agency should compare the proposed fare to what it might charge for a similar trip under a demand response scenario.

(26) Q: How can a transit agency tell if the fare is ''premium''?

A: The transit agency should analyze its regular fares to determine whether the fare charged is higher than its regular fare for comparable services. For example, if the transit agency proposes to provide an express shuttle service to football games, it should look at the regular fares charged for express shuttles of similar distance elsewhere in the transit system. In addition, the service may be charter if the transit agency charges a lower fare or no fare because of a third party subsidy.

(27) Q: What if a transit agency charges a customer an up front special event fare that includes the outbound and inbound trips, is that a premium fare?

A: It depends. If the transit agency charges the outbound and inbound fares up front, but many customers don't travel both directions, then the fare may be premium. This would not be true generally for park and ride lots, where the customer parks his or her car, and, would most likely use transit to return to the same lot. Under that scenario, the transit agency may collect the regular outbound and inbound fare up front.

(28) Q: What if a transit agency wishes to create a special pass for an event or function on an irregular basis or for a limited duration that allows a customer to ride the transit system several times for the duration of the event, is that charter?

A: It depends. If the special pass costs more than the fare for a reasonable number of expected individual trips during the event, then the special pass represents a premium fare. FTA will also consider whether a third party provides a subsidy for the service.

(29) Q: Is it a third party subsidy if a third party collects the regular fixed route fare for the transit agency?

A. Generally no. If the service provided is not at the request of a third party for the exclusive use of a bus or van, then a third party collecting the fare would not qualify the service as charter. But, a transit agency has to consider carefully whether the service is at the request of an event planner. For example, a group offers to make ''passes'' for its organization and then later work out the payment to the transit agency. The transit agency can only collect the regular fare for each passenger.

(30) Q: If the transit agency is part of the local government and an agency within the local government pays for service to an event or function of limited duration or that occurs on an irregular basis, is that charter?

A: Yes. Since the agency pays for the charter service, whether by direct payment or transfer of funds through internal local government accounts, it represents a third party payment for charter service. Thus, the service would meet the definition of charter service under 49 CFR Section 604.3(c) (1).

(31) Q: What if an organization requests and pays for service through an in-kind payment such as paying for a new bus shelter or providing advertising, is that charter?

A: Yes. The service is provided at the request of a third party for a negotiated price, which would be the cost of a new bus shelter or advertising. The key here is the direct payment for service to an event or function. For instance, advertising that appears on buses for regular service does not make it charter.

(32) Q: Under the definition of ''Government Officials,'' does the government official have to currently hold an office in government?

A: Yes. In order to take advantage of the Government Official exception, the individual must hold currently a government position that is elected or appointed through a political process.

(33) Q: Does a university qualify as a QHSO?

A: No. Most universities do not have a mission of serving the needs of the elderly, persons with disabilities, or low income individuals.

(34) Q: Do the Boy Scouts of America qualify as a QHSO?

A: No. The Boy Scouts of America's mission is not to serve the needs of the elderly, persons with disabilities, or low income individuals.

(35) Q: What qualifies as indirect financial assistance?

A: The inclusion of ''indirect'' financial assistance as part of the definition of ''recipient'' covers ''subrecipients.'' In other words, ''subrecipients'' are subject to the charter regulation. FTA modified the definition of recipient in the final rule to clarify this point.

(c) Exceptions (49 CFR Subpart B)

(36) Q: In order to take advantage of the Government Officials exception, does a transit agency have to transport only elected or appointed government officials?

A: No, but there has to be at least one elected or appointed government official on the trip.

(37) Q: If a transit agency provides notice regarding a season's worth of service and some of the service will occur in less than 30 days, does a registered charter provider have to respond within 72 hours or 14 days?

A: A transit agency should provide as much notice as possible for service that occurs over several months. Thus, a transit agency should provide notice to registered charter providers more than 30 days in advance of the service, which would give registered charter provider 14 days to respond to the notice. Under pressure to begin the service sooner, the transit agency could provide a separate notice for only that portion of the service occurring in less than 30 days.

(38) Q: Does a transit agency have to contact registered charter providers in order to petition the Administrator for an event of regional or national significance?

A: Yes. A petition for an event of regional or national significance must demonstrate that not only has the public transit agency contacted registered charter providers, but also demonstrate how the transit agency will include registered charter providers in providing the service to the event of regional or national significance.

(39) Q: Where does a transit agency have to file its petition?

A: A transit agency must file the petition with the ombudsman at *ombudsman.charterservice@dot.gov*. FTA will file all petitions in the Petitions to the Administrator docket (FTA–2007–0022) at *http://www.regulations.gov.*

(40) Q: What qualifies as a unique and time sensitive event?

A: In order to petition the Administrator for a discretionary exception, a public transit agency must demonstrate that the event is unique or that circumstances are such that there is not enough time to check with registered charter providers. Events that occur on an annual basis are generally not considered unique or time sensitive.

(41) Q: Is there any particular format for quarterly reports for exceptions?

A: No. The report must contain the information required by the regulations and clearly identify the exception under which the transit agency performed the service.

(42) Q: May a transit agency lease its vehicles to one registered charter provider if there is another registered charter provider that can perform all of the requested service with private charter vehicles?

A: No. A transit agency may not lease its vehicles to one registered charter provider when there is another registered charter provider that can perform all of the requested service. In that case, the transit vehicles would enable the first registered charter provider to charge less for the service than the second registered charter provider that uses all private charter vehicles.

(43) Q: Where do I submit my reports?

A: FTA has adapted its electronic grants making system, TEAM, to include charter rule reporting. Grantees should file the required reports through TEAM. These reports will be available to the public through FTA's charter bus service Web page at: *http://ftateamweb.fta.dot.gov/Teamweb/CharterRegistration/QueryCharterReport.aspx.* State Departments of Transportation are responsible for filing charter reports on behalf of its subrecipients that do not have access to TEAM.

(d) Registration and Notification (49 CFR Subpart C)

(44) Q: May a private provider register to receive notice of charter service requests from all 50 States?

A: Yes. A private provider may register to receive notice from all 50 States; however, a private provider should only register for those states for which it can realistically originate service.

(45) Q: May a registered charter provider select which portions of the service it would like to provide?

A: No. A registered charter provider may not ''cherry pick'' the service described in the notice. In other words, if the e-mail notification describes service for an entire football season, then a registered charter provider that responds to the notice indicating it can provide only a couple of weekends of service would be non-responsive to the e-mail notice. Public transit agencies may, however, include several individual charter events in the e-mail notification. Under those circumstances, a registered charter provider may select from those individual events to provide service.

(46) Q: May a transit agency include information on ''special requests'' from the customer in the notice to registered charter providers?

A: No. A transit agency must strictly follow the requirements of 49 CFR Section 604.14, otherwise the notice is void. A transit agency may, however, provide a generalized statement such as ''Please do not respond to this notice if you are not interested or cannot perform the service in its entirety.''

(47) Q: What happens if a transit agency sends out a notice regarding charter service, but later decides to perform the service free of charge and without a third party subsidy?

A: If a transit agency believes it may receive the authority to provide the service free of charge, with no third party subsidy, then it should send out a new e-mail notice stating that it intends to provide the service free of charge.

(48) Q: What happens if a registered charter provider initially indicates interest in providing the service described in a notice, but then later is unable to perform the service?

A: If the registered charter provider acts in good faith by providing reasonable notice to the transit agency of its changed circumstances, and that registered charter provider was the only one to respond to the notice, then the transit agency may step back in and provide the service.

(49) Q: What happens if a registered charter provider indicates interest in providing the service, but then does not contact the customer?

A: A transit agency may step back in and provide the service if the registered charter provider was the only one to respond affirmatively to the notice.

(50) Q: What happens if a registered charter provider indicates interest in providing the service, contacts the customer, and then fails to provide a price quote to the customer?

A: If the requested service is 14 days or less away, a transit agency may step back in and provide the service if the registered charter provider was the only one to respond affirmatively to the notice upon filing a complaint with FTA to remove the registered charter provider from the FTA Charter Registration Web site. If the complaint of ''bad faith'' negotiations is not sustained by FTA, the transit agency may face a penalty, as determined by FTA. If the requested service is more than 14 days away, and the transit agency desires to step back in, then upon filing a complaint alleging ''bad faith'' negotiations that is sustained by FTA, the transit agency may step back in.

(51) Q: What happens if a transit agency entered into a contract to perform charter service before the effective date of the final rule?

A: If the service described in the contract occurs after the effective date of the final rule, the service must be in conformance with the new charter regulation.

(52) Q: What if the service described in the notice requires the use of park and ride lots owned by the transit agency?

A: If the transit agency received Federal funds for those park and ride lots, then the transit agency should allow a registered charter provider to use those lots upon a showing of an acceptable incidental use (the transit agency retains satisfactory continuing control over the park and ride lot and the use does not interfere with the provision of public transportation) and if the registered charter provider signs an appropriate use and indemnification agreement.

(53) Q: What if the registered charter provider does not provide quality charter service to the customer?

A: If a registered charter provider does not provide service to the satisfaction of the customer, the customer may pursue a civil action against the registered charter provider in a court of law. If the registered charter provider also demonstrated bad faith or fraud, it can be removed from the FTA Charter Registration Web site.

(e) Complaint & Investigation Process

(54) Q: May a trade association or other operators that are unable to provide requested charter service have the right to file a complaint against the transit agency?

A: Yes. A registered charter operator or its duly authorized representative, which can include a trade association, may file a complaint under section 604.26(a). Under the new rule, a private charter operator that is not registered with FTA's charter registration Web site may not file a complaint.

(55) Q: Is there a time limit for making complaints?

A: Yes. Complaints must be filed within 90 days of the alleged unauthorized charter service.

(56) Q: Are there examples of the likely remedies FTA may impose for a violation of the charter service regulations?

A: Yes. Appendix D contains a matrix of likely remedies that FTA may impose for a violation of the charter service regulations.

(57) Q: When a complaint is filed, who is responsible for arbitration or litigation costs?

A: FTA will pay for the presiding official and the facility for the hearing, if necessary. Each party involved in the litigation is responsible for its own litigation costs.

(58) Q: What affirmative defenses might be available in the complaint process?

A: An affirmative defense to a complaint could state the applicability of one of the exceptions such as 49 CFR Section 604.6, which states that the service that was provided was within the allowable 80 hours of government official service.

(59) Q: What can a transit agency do if it believes that a registered charter provider is not bargaining in good faith with a customer?

A: If a transit agency believes that a registered charter provider is not bargaining in good faith with the customer, the transit agency may file a complaint to remove the registered charter provider from FTA's Charter Registration Web site.

(60) Q: Does a registered charter provider have to charge the same fare or rate as a public transit agency?

A: No. A registered charter provider is not under an obligation to charge the same fare or rate as public transit agency. A registered charter provider, however, must charge commercially reasonable rates.

(61) Q: What actions can a private charter operator take when it becomes aware of a transit agency's plan to engage in charter service just before the date of the charter?

A: As soon as a registered charter provider becomes aware of an upcoming charter event that it was not contacted about, then it should request an advisory opinion and cease and desist order. If the service has already occurred, then the registered charter provider may file a complaint.

(62) Q: When a registered charter provider indicates that there are no privately owned vehicles available for lease, must the public transit agency investigate independently whether the representation by the registered charter provider is accurate?

A: No. The public transit agency is not required to investigate independently whether the registered charter provider's representation is accurate unless there is reason to suspect that the registered charter provider is committing fraud. Rather, the public transit agency need only confirm that the number of vehicles owned by all registered charter providers in the geographic service area is consistent with the registered charter provider's representation.

(63) Q: How will FTA determine the remedy for a violation of the charter regulations?

A: Remedies will be based upon the facts of the situation, including but not limited to, the extent of deviation from the regulations and the economic benefit from providing the charter service. See section 604.47 and Appendix D for more details.

(64) Q: Can multiple violations in a single finding stemming from a single complaint constitute a pattern of violations?

A: Yes. A pattern of violations is defined as more than one finding of unauthorized charter service under this part by FTA beginning with the most recent finding of unauthorized charter service and looking back over a period not to exceed 72 months. While a single complaint may contain several allegations, the complaint must allege more than a single event that included unauthorized charter service in order to establish a pattern of violations.

(f) Miscellaneous

(65) Q: If a grantee operates assets that are locally funded are such assets subject to the charter regulations?

A: It depends. If a recipient receives FTA funds for operating assistance or stores its vehicles in a FTA-funded facility or receives indirect FTA assistance, then the charter regulations apply. The fact that the vehicle was locally funded does not make the recipient exempt from the charter regulations. If both operating and capital funds are locally supplied, then the vehicle is not subject to the charter service regulations.

(66) Q: What can a public transit agency do if there is a time sensitive event, such as a presidential inauguration, for which the transit agency does not have time to consult with all the private charter operators in its area?

A: 49 Section 604.11 provides a process to petition the FTA Administrator for permission to provide service for a unique and time sensitive event. A presidential inauguration, however, is not a good example of a unique and time sensitive event. A presidential inauguration is an event with substantial advance planning and a transit agency should have time to contact private operators. If the inauguration also includes ancillary events, the public transit agency should refer the customer to the registration list.

(67) Q: Are body-on-van-chassis vehicles classified as buses or vans under the charter regulation?

A: Body-on-van-chassis vehicles are treated as vans under the charter regulation.

(68) Q: When a new operator registers, may recipients continue under existing contractual agreements for charter service?

A: Yes. If the contract was signed before the new private operator registered, the arrangement can continue for up to 90 days. During that 90 day period, however, the public transit agency must enter into an agreement with the new registrant. If not, the transit agency must terminate the existing agreement for all registered charter providers.

(69) Q: Must a public transit agency continue to serve as the lead for events of regional or national significance, if after consultation with all registered charter providers, registered charter providers have enough vehicles to provide all of the service to the event?

A. No. If after consultation with registered charter providers, there is no need for the public transit vehicles, then the public transit agency may decline to serve as the lead and allow the registered charter providers to work directly with event organizers. Alternatively, the public transit entity may retain the lead and continue to coordinate with event organizers and registered charter providers.

(70) Q: What happens if a customer specifically requests a trolley from a transit agency and there are no registered charter providers that have a trolley?

A: FTA views trolleys as buses. Thus, all the privately owned buses must be engaged in service and unavailable before a transit agency may lease its trolley. Alternatively, the transit agency could enter into an agreement with all registered charter providers in its geographic service area to allow it to provide trolley charter services.

(71) Q: How does a transit agency enter into an agreement with all registered charter providers in its geographic service area?

A: A public transit agency should send an email notice to all registered charter providers of its intent to provide charter service. A registered charter provider must respond to the email notice either affirmatively or negatively. The transit agency should also indicate in the email notification that failure to respond to the email notice results in concurrence with the notification.

(72) Q: Can a registered charter provider rescind its affirmative response to an email notification?

A: Yes. If after further consideration or a change in circumstances for the registered charter provider, a registered charter provider may notify the customer and the transit agency that it is no longer interested in providing the requested charter service. At that point, the transit agency may make the decision to step back in to provide the service.

(73) Q: What happens after a registered charter provider submits a quote for charter services to a customer? Does the transit agency have to review the quote?

A: Once a registered charter provider responds affirmatively to an email notification and provides the customer a commercially reasonable quote, then the transit agency may not step back in to perform the service. A transit agency is not responsible for reviewing the quote submitted by a registered charter provider. FTA recommends that a registered charter provider include in the quote an expiration date for the offer.

■ 4. Revise Appendix D to part 604 to read as follows:

Appendix D to Part 604—Table of Potential Remedies

Remedy Assessment Matrix

EXTENT OF DEVIATION FROM REGULATORY REQUIREMENTS

	Major	Moderate	Minor
Economic Benefit:			
Major	$25,000/violation to 20,000	$19,999/violation to 15,000	$14,999/violation to 11,000.
Moderate	$10,999/violation to 8,000	$7,999/violation to 5,000	$4,999/violation to 3,000.
Minor	$2,999/violation to 1,500	1,499/violation to 500	$499/violation to 100.

FTA's Remedy Policy

— This remedy policy applies to decisions by the Chief Counsel, Presiding Officials, and final determinations by the Administrator.

— Remedy calculation is based on the following elements:

(1) The nature and circumstances of the violation;

(2) The extent and gravity of the violation (''extent of deviation from regulatory requirements'');

(3) The revenue earned (''economic benefit'') by providing the charter service;

(4) The operating budget of the recipient;

(5) Such other matters as justice may require; and

(6) Whether a recipient provided service described in a cease and desist order after issuance of such order by the Chief Counsel.

Issued this 24th day of July, 2008.

James S. Simpson,

Administrator.

[FR Doc. E8–17487 Filed 7–31–08; 8:45 am]

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Proposed Rules

Federal Register
Vol. 73, No. 149
Friday, August 1, 2008

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0736; Directorate Identifier 2008–NM–102–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–14, DC–9–15, and DC–9–15F Airplanes, and DC–9–20, DC–9–30, DC–9–40, and DC–9–50 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain McDonnell Douglas airplanes listed above. This proposed AD would require installing a dam assembly for the container of the fuel boost pump of the center tank located in the right main tank, and doing the related investigative actions, and corrective actions if necessary. This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to prevent the center tank fuel boost pump from operating in a fuel vapor zone and becoming a potential ignition source in the right main tank, potentially resulting in a fuel tank explosion and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by September 15, 2008.

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

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

For service information identified in this AD, contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024).

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: William S. Bond, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5253; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0736; Directorate Identifier 2008–NM–102–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

The manufacturer has found that a potential ignition source may occur in the boost pump container of the center fuel tank located in the right main tank. When the center fuel tank level is low, fuel from the boost pump container of the center fuel tank is drained allowing pumps to operate in a fuel vapor zone. Installing a dam in the boost pump container of the center fuel tank raises the retained fuel level in the container, keeping the boost pumps and connectors submerged in fuel. When the center fuel tank level is low, this condition, if not corrected, could cause a potential ignition source if a pump motor case or connector burn through occurred, resulting in a fuel tank explosion and consequent loss of the airplane.

Relevant Service Information

We have reviewed Boeing Service Bulletin DC9–28–216, dated March 18, 2008. The service bulletin describes procedures for installing a dam assembly for the container of the fuel boost pump of the center tank located in the right main tank and doing the related investigative and applicable corrective actions. The related investigative action is doing a leak check on the installation, and the applicable corrective action is reapplying sealant to repair any leak detected.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs. This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD would affect 413 airplanes of U.S. registry. We also estimate that it would take about 3 or 7 work-hours per product, depending on airplane configuration, to comply with this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost $1,142 or $1,697 per product, depending on configuration of the airplane. Based on these figures, we estimate the cost of this proposed AD to the U.S. operators to be $570,766 or $932,141, or $1,382 or $2,257 per product, depending on configuration of the airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket No. FAA–2008–0736; Directorate Identifier 2008–NM–102–AD.

Comments Due Date

(a) We must receive comments by September 15, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Model DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, DC–9–32F (C–9A, C–9B), DC–9–41, and DC–9–51 airplanes, certificated in any category; as identified in Boeing Service Bulletin DC9–28–216, dated March 18, 2008.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent the center tank fuel boost pump from operating in a fuel vapor zone and becoming a potential ignition source in the right main tank, potentially resulting in a fuel tank explosion and consequent loss of the airplane.

Compliance

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

Install Dam Assembly

(f) Within 60 months after the effective date of this AD, install a dam assembly for the container of the fuel boost pump of the center tank located in the right main tank, and do the related investigative and applicable corrective actions, by accomplishing all the actions specified in the Accomplishment Instructions of Boeing Service Bulletin DC9–28–216, dated March 18, 2008. Do the applicable corrective actions before further flight.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, FAA, Los Angeles Aircraft Certification Office, ATTN: William S. Bond, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5253; fax (562) 627–5210; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies,

notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Issued in Renton, Washington, on July 23, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–17620 Filed 7–31–08; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 40, 41, and 145

RIN 3038–AC44

Confidential Information and Commission Records and Information

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking, reproposal.

SUMMARY: On July 20, 2007, the Commission published in the **Federal Register** a notice of proposed rulemaking to amend the procedures under which designated contract markets (DCMs), derivatives clearing organizations (DCOs), and derivatives transaction execution facilities (DTEFs) (collectively, ''registered entities'') may request confidential treatment for products and rules submitted via certification procedures or for Commission review and approval under parts 40 and 41 of the Commission's regulations.[1] Under the proposed amendments to Commission regulation 40.8, registered entities filing product and rule submissions would follow a procedure separate from the customary Freedom of Information Act (FOIA) confidential treatment procedures specified in Commission regulation 145.9, 17 CFR 145.9. As proposed to be amended, regulation 40.8(c) provided that: registered entities submitting material under parts 40 and 41 would be required to file a detailed written justification simultaneously with the request for confidential treatment; registered entities submitting material under parts 40 and 41 would be required to segregate material for which confidential treatment is requested in an appendix to the submission; and Commission staff may make an initial determination to grant or deny confidential treatment to such material before receiving a request under the FOIA. Regulation 40.8(c) is being reproposed to clarify that an initial determination by staff to deny confidential treatment may be appealed to the Commission's Office of General Counsel and that such an appeal will stay release of the material. The Commission believes these amendments, by creating a separate confidential treatment review process for filings under parts 40 and 41, will enhance the Commission's ability to provide the public with immediate access to non-confidential information.

The Commission received comments from three registered entities in response to the proposed rulemaking.[2] Two commenters expressed concerns with the amendments themselves and questioned the adequacy of the Commission's explanation for proposing the changes. In response to those comments, the Commission has determined to re-propose the amendments to regulation 40.8 to: clarify the procedure for seeking review of an adverse determination; amend appendix D to part 40 by adding to the submission cover sheet a box to be checked if confidential treatment is requested for any part of the underlying submission, in order to assist staff in efficiently and accurately posting publicly available information on the Commission's Web site; and amend Commission regulation 145.9(b) to clarify that its procedures for requesting confidential treatment do not apply to submissions filed under parts 40 and 41. The Commission further intends in this reproposal to more fully address its reasons for the proposed amendments and to explain the distinction between the proposed procedure and the procedures specified in regulation 145.9.

DATES: Submit comments on or before September 2, 2008. Comments previously submitted need not be resubmitted.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Mail/Hand Deliver:* David Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *E-mail: secretary@cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Susan Nathan, Senior Special Counsel, (202) 418–5133, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. *Electronic mail: snathan@cftc.gov.* This document is also available at *http://www.regulations.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Overview

Part 40 of the Commission's regulations sets forth the standards and procedures to be followed by registered entities[3] for listing products for trading by certification to the Commission; voluntary submission of new products for Commission review and approval; amendments to terms or conditions of enumerated agricultural contracts; voluntary submission of rules for Commission review and approval; and self-certification of rules by DCMs and DCOs. Part 41 of the regulations provides standards and procedures for filing required information with respect to security futures products. Although much of the information required by parts 40 and 41 is made public by statute, regulation or agency practice, the Commission has observed an increase over the past several years in the number of confidential treatment requests for filings submitted under these parts. Most, but not all of these requests for confidential treatment have been submitted to the Commission in connection with market maker and other incentive programs (collectively, incentive programs).[4]

B. Freedom of Information Act

Most requests for confidential treatment are made pursuant to the Freedom of Information Act, 5 U.S.C. 552 (FOIA), which provides generally that the public has a right of access to federal agency records except to the extent such records, or portions of them, are protected from disclosure by one or

[1] 72 FR 39764 (July 20, 2007).

[2] Letter dated August 20, 2007 from CME Group (CME); Letter dated August 20, 2007 from CBOE Futures Exchange (CFE); Letter dated August 23, 2007 from New York Mercantile Exchange, Inc. (NYMEX).

[3] A registered entity is defined in section 1a(29) of the Commodity Exchange Act (Act) as a DCM under section 5 of the Act (including section 5f), a DTEF registered under section 5a of the Act, and a DCO registered under section 5b of the Act. Section 5f of the Act, along with part 41 of the Commission's regulations, establishes requirements for national securities exchanges, national securities associations and alternative trading systems registered with the Securities and Exchange Commission to notice register with the Commission in order to list security futures products (*i.e.*, futures on a single equity security and futures on narrow-based security indexes).

[4] Incentive programs typically are created by a registered entity to increase volume of trading and liquidity for new product launches or in markets that for other reasons have low trading volume. In general, registered entities have requested confidential treatment for the name of the market maker(s), the compensation arrangements provided by the registered entity, trade priorities (*i.e.*, percentage of the order flow), and the bid/ask spread level.

more of nine exemptions.[5] A registered entity requesting confidential treatment under the FOIA typically asserts that the information submitted to the Commission should be protected from disclosure pursuant to FOIA exemption (b)(4), 5 U.S.C. 552(b)(4), because its release will cause commercial or competitive harm to the submitter.[6]

C. The Commission's Implementing Regulations

All agencies subject to the FOIA are required to establish rules, procedures and standards for implementing that statute.[7] The Commission's FOIA rules are codified in part 145 of its regulations. Commission regulation 145.9 sets forth the procedures for requesting confidential treatment under the FOIA for information furnished to the Commission and for challenging adverse determinations of such requests. Under these provisions, a submitter must make, at the time of submission, a written request for confidential treatment which specifies the basis on which it believes confidential treatment is warranted. Unless and until a FOIA request is made for the material, however, no determination is made with respect to any request for confidential treatment.[8] When a FOIA request is received, the submitter of the requested information is required to file a detailed written justification of the confidential treatment request.[9] If staff initially determines that the request should be denied, regulation 145.9 permits the submitter to file an appeal of that initial decision with the Commission's Office of General Counsel. Likewise, if staff initially determines to grant the request for confidential treatment, a subsequent FOIA requester may appeal that decision to the Office of General Counsel.

Commission regulation 145.9 also permits the Commission to specify ''alternative procedures'' for ''a particular study, report, investigation, or other matter.''[10] Consistent with that authority, the Commission is proposing to specify alternative procedures for processing requests for confidential treatment of filings submitted under parts 40 and 41 of the Commission's regulations.

II. The Proposed Amendments

A. Procedures for Requesting Confidential Treatment Under Parts 40 and 41

The Commission is proposing to add paragraph (c) to Commission regulation 40.8 to establish the exclusive procedure to be followed by registered entities when requesting confidential treatment for information required to be filed under parts 40 and 41.[11] The Commission is also proposing to add paragraph (d) to regulation 40.8 to make clear the circumstances under which requests for confidential treatment will not be considered. Under the new procedure, the request for confidential treatment and a detailed written justification must be filed simultaneously with the submission, in the form and manner prescribed by Commission regulation 145.9(e). Further, the material for which confidentiality is claimed must be separated from the remainder of the submission and filed as an appendix. Proposed regulation 40.8(c) would permit Commission staff immediately to make an initial determination to grant or deny confidential treatment rather than deferring consideration until a FOIA request is received for the information, and would allow the submitter to appeal an adverse decision to the Commission's Office of General Counsel in the manner prescribed by Commission regulation 145.9(g). Proposed regulation 40.8(c) would not preclude reconsideration of a confidential treatment decision made under this regulation if a request for the material is subsequently made under the FOIA. In such circumstances, the process would be governed by the part 145 regulations.

The FOIA addresses tensions between the public's interest in access to certain information and the government's (or in some circumstances, the submitter's) interest in nondisclosure of sensitive information. Accordingly, that statute generally is triggered by a request for information from a member of the public, and the Commission's FOIA regulation provides that submitters of information who have properly requested confidential treatment need not file a detailed written justification supporting that request unless they receive notice from the Commission that it has received a FOIA request for that information.[12] Those tensions are not present here. On the contrary, Congress included in the Act's core principles applicable to registered entities requirements that DCMs, DCOs and DTEFs make certain information available to the public,[13] and the Commission demonstrated its commitment to transparency by adopting a regulation describing the types of information it considered publicly available.[14] In the Commission's view, the FOIA does not protect public information, and the absence of a FOIA request should not be permitted to delay or hinder its release of such information to the public. Accordingly, under proposed regulation 40.8(c), Commission staff may immediately analyze the merits of a detailed written justification and balance the submitter's interest in confidentiality against the Commission's interest in fostering transparency. The Commission intends, and the re-proposed regulation clarifies, that the procedure described in proposed regulation 40.8(c)(1) would expedite the release of information to the public while continuing to afford a registered entity the opportunity to challenge the denial of a confidential treatment request. As re-proposed, regulation 40.8(c) makes plain that the registered entity may follow the procedures outlined in the Commission's general FOIA regulation to appeal a staff denial of confidential treatment to the Commission's Office of General Counsel.[15] The re-proposed regulation further clarifies that a grant of any part of a request for confidential treatment may be reconsidered if a FOIA request for the same material subsequently is received by the Commission.

When a registered entity requests confidential treatment for an entire submission filed under part 40 or 41, Commission staff frequently asks the entity to amend its original submission by segregating out the material for which it claims confidentiality so that remaining materials can be made public without delay.[16] Registered entities

[5] 5 U.S.C. 552(b)(1)–(9).

[6] Exemption (b)(4) of the FOIA protects trade secrets and commercial or financial information obtained from a person that is privileged or confidential. *See also* Commission regulation 145.9(d)(ii).

[7] The FOIA requires that each agency promulgate regulations governing, *inter alia*, the methods whereby the public may obtain information, make submissions or obtain decisions as well as other substantive and procedural FOIA regulations. 5 U.S.C. 552(a).

[8] *See* 17 CFR 145.9(d)(10).

[9] The guidelines and standards for preparing and filing a detailed written justification are found in Commission regulation 145.9(e).

[10] Commission regulation 145.9(b).

[11] The proposal also would add new regulations 40.2(a)(3)(iv), 40.6(a)(3)(vi), 41.23(a)(7), and 41.24(a)(6), and amend regulations 40.3(a)(7) and 40.5(a)(8) to direct the registered entity requesting confidential treatment for submissions made under part 40 or 41 to follow the new procedures specified in Commission regulation 40.8(c).

[12] *See* Commission regulation 145.9(e)(1), 17 CFR 145.9(e)(1).

[13] See section 5(a)(7) (DCM Core Principle 7); section 5b(2)(L) (DCO Core Principle L); and section 5a(d)(5) (DTEF Core Principle 5).

[14] See regulation 40.8(a).

[15] See regulation 145.9(g), 17 CFR 145.9(g).

[16] The Commission's policy is to provide public availability of submission information by posting submissions filed under parts 40 and 41 on the Commission's Web site as efficiently and accurately as possible.

generally have been receptive to these informal staff requests. Proposed regulation 40.8(c)(2), which would require that material deemed confidential be segregated in an appendix to the submission, would codify this staff practice and enable the Commission to make plainly non-confidential material immediately available to the public while staff evaluates the registered entity's claims of confidentiality for the segregated material.

B. Public Availability of Terms and Conditions of Products and Mechanisms for Executing Transactions on or Through the Facilities of the Contract Market

As noted, substantial portions of the material filed pursuant to parts 40 and 41 are required by statute to be made publicly available by registered entities. Section 5(d)(7) of the Act—DCM Core Principle 7—requires that the terms and conditions of contracts and the mechanisms for executing transactions on or through a DCM be made available by the DCM to market authorities, market participants, and the public.[17] Similarly, DTEF Core Principle 5 requires that boards of trade publicly disclose specified information, and Core Principle L requires that DCOs make available to market participants information concerning the rules and operating systems of clearing and settlement systems. In 2004, the Commission added paragraph (a) to regulation 40.8 to specify the portions of DTEF, DCO and DCM applications which are publicly available.[18]

Furthermore, regulations 40.3(a)(7) and 40.5(a)(8) specify that a product's terms and conditions are publicly available at the time of their submission. Product terms and conditions made publicly available at the time of submission enable the Commission to obtain the views of market participants and others to ascertain whether the proposed product would be readily susceptible to manipulation or would otherwise violate the Act. To this end, Commission staff routinely conduct trade interviews when reviewing novel instruments to ascertain the relative susceptibility of a product to manipulation. To be meaningful, these interviews require the release of the proposed instrument's terms and conditions.[19]

The Commission wishes to ensure that registered entities are fully aware that staff will summarily deny requests for confidential treatment of information that is publicly-available pursuant to statute or regulation. Accordingly, the Commission proposes also to amend part 40 by adding new paragraph (d) to regulation 40.8 to provide that staff will not consider requests for confidential treatment of information that is subject to section 5(d)(7) or regulations 40.3(a)(7) and 40.5(a)(8).

C. Comments Received

In response to its original proposal, the Commission received comment letters from CME Group, CBOE Futures Exchange (CFE), and the New York Mercantile Exchange (NYMEX). These comments raised several related concerns.

1. Market Maker Programs and Mechanisms for Executing Transactions

CFE generally supported proposed regulation 40.8(c) but urged that it be further amended to specify that the terms and conditions of market maker programs and other compensation and incentive plans will be denied confidential treatment because they are rules as defined in Commission regulation 40.1. The CME, on the other hand, asserted that DCMs have a legitimate commercial and competitive interest in maintaining the confidentiality of specific information about the contractual obligations of, and incentives offered to, their market makers.

Market maker and incentive programs are considered ''rules'' under Commission regulations and are presumptively public. Accordingly, it is agency practice to post compensation and incentive information promptly on the Commission's Web site. The Commission believes that market participants should have the opportunity to evaluate the compensation structures of incentive programs since these arrangements may affect the quality of price quotations provided by market makers as well as liquidity in the market. Because material of this kind routinely is made public, disclosure will not create a competitive disadvantage for any exchange.[20] Incentive programs may, however, include information for which confidential treatment is appropriate. Commission staff has, for example, withheld information relating to participant names, bid-ask spreads and minimum size requirements of bid/ask spreads because access to this information could give an unfair advantage to potential counterparties of market makers as well as providing other markets with a competitive edge when setting up their own market maker programs and negotiating agreements with potential market makers. In these circumstances, the Commission believes that while incentive programs may presumptively be public, those programs may from time to time include commercially valuable information which may be entitled to protection. Accordingly, summary denial of confidential treatment to all information in incentive programs would be inappropriate.

NYMEX made a similar argument in connection with the Commission's determination not to process confidential treatment requests covering, inter alia, the mechanisms for executing transactions on or through the facilities of the contract market. NYMEX claims that a trading tool could potentially qualify as proprietary intellectual property for which a registered entity may seek protection under patent or trademark laws. The Commission notes that mechanisms for executing transactions on or through the facilities of a contract market are required by statute to be made publicly available.[21] The Commission also recognizes the importance to a registered entity of protecting what it believes to be commercially sensitive

[17] Mechanisms for executing transactions generally include such information as trading algorithms, market maker programs and information from an exchange's rulebook that pertain to or impact trading.

[18] Publicly available portions include: Transmittal letter, proposed rules, the applicant's regulatory compliance chart, documents establishing the applicant's legal status, and documents setting forth the applicant's governance structure. The Commission noted that regulation 40.8(a) is not intended to limit the information that may be released, but to specify the portions of an application that are automatically public and therefore would not be granted confidential treatment under any circumstances. 69 FR 67503 (Nov. 18, 2004).

[19] In cases of new products for which Commission approval has been requested, the Commission generally intends to continue its long-standing practice of requesting public comment on the terms and conditions by publication of notices in the **Federal Register**. Where notice in the **Federal Register** is impracticable or otherwise unnecessary, notice of a submission for voluntary approval and of the public availability of the proposed product's terms and conditions will be through the Commission's internet Web site (*http://www.cftc.gov*). The terms and conditions of products eligible for trading by self-certification will be available from the Commission at the time that the exchange legally could commence trading: The beginning of the business day following certification to the Commission.

[20] As CFE observed, the Commission's Office of General Counsel so reasoned in rejecting an exchange's claim that its market maker information was proprietary and protected under FOIA exemption (b)(4), which protects under certain circumstances commercial or financial information where its release could cause competitive harm to the submitter. Letter dated October 27, 2005 from Office of General Counsel regarding Freedom of Information Act Nos. 05–0138 and 05–0139.

[21] See Section 7(d)(8) of the CEA, 7 U.S.C. 7(d)(8) (DCM Core Principle 8).

information, and invites public comment with respect to specific types of trading tools that should be given consideration under a request for confidential treatment.

2. Limited Applicability of Proposed Regulation to Registered Entities

In its comment letter, NYMEX questioned why the proposed regulation singles out registered exchanges and clearing organizations for the new requirements, while other submitters of information would continue to follow the FOIA procedures in regulation 145.9 when requesting confidential treatment of submissions to the Commission. On the contrary, the proposed rule does not target a specific group of submitters but rather is directed toward specific categories of submissions—those filed pursuant to parts 40 and 41—for which confidential treatment is frequently claimed despite requirements in the Commodity Exchange Act and Commission regulations that those submissions be made available to the public. The harm to be remedied is the frequently unwarranted delay in making public information filed pursuant to these regulations. When registered entities have occasion to submit other types of information to the Commission, they would continue to follow the procedures provided in Commission regulation 145.9 for requesting confidential treatment under the FOIA of those submissions.

3. Relationship of the Proposed Procedures to the FOIA Process

Other concerns raised by the commenters may spring from a misunderstanding of the relationship between the proposed regulation and the FOIA. NYMEX, for example, appears to believe that all confidentiality issues arise in the context of the FOIA and must be made ''ripe'' by a FOIA request.[22] On the contrary, confidentiality issues frequently arise outside the scope of the FOIA and are resolved without reference to that statute.[23] As noted above, the Commission's responsibility to provide transparency with respect to certain information exists separately from its duty to implement the FOIA. The latter obligation is addressed by the Commission's part 145 regulations, which deal with disclosure issues in the context of public requests for information under the FOIA and are not necessarily relevant or useful outside that context. In contrast, while registered entities' interest in having their part 40 and 41 submissions protected from disclosure may implicate the FOIA, it is separately in tension with their statutory responsibility to make certain information publicly available and with the Commission's commitment to providing transparency where appropriate. It is this tension, not the filing of a FOIA request, that signifies ''ripeness.'' As discussed above, the Commission's obligations are in some instances statutory. In other circumstances, the Commission has concluded as a matter of policy that public access information about products and trading mechanisms generally outweighs the asserted right of a registered entity to keep its information confidential. Without the measures provided by the proposed rulemaking, the Commission's ability fully to consider the impact of a rule on the public would continue to be dependent on the filing of a FOIA request to trigger the resolution of confidentiality and disclosure issues.

CME's observation that such a request ''is likely never to be received''[24] highlights the necessity for the proposed regulation. The Commission frequently has been hobbled in its efforts to make information public by confidential treatment requests which, while perhaps not calculated to do so, can create a lengthy delay in the disclosure of information the Commission believes should be publicly available. The amendments we have proposed will permit the Commission to quickly resolve confidentiality issues in connection with material submitted pursuant to parts 40 and 41.

In that regard, the CME questioned the fairness of the proposed regulation, asserting that it would prejudice FOIA requesters who would not have an opportunity to respond to an appeal under the procedures specified in the proposal. Similarly, the exchange expressed concern that because the Commission may reconsider a grant of confidential treatment if a FOIA request is subsequently made for the material, the registered entity would be required to submit a ''new updated detailed written justification based on possible changed circumstances at the time of the appeal.''[25]

The Commission believes these concerns are unwarranted. If an appeal were filed by a registered entity under the procedures specified in proposed regulation 40.8(c), no FOIA requester's rights would be compromised, because the appeal would be based on staff's initial determination to disclose the subject information prior to the filing of a FOIA request. Should a FOIA requester subsequently seek information given confidential treatment under regulation 40.8(c), the process would be governed by FOIA regulation 145.9, and both the FOIA requester and the submitter would have the appeal rights provided by regulation 145.9. In these circumstances, the Commission believes that fairness requires that the registered entity be given an opportunity to update its detailed written justification based on ''possible changed circumstances at the time of the appeal'' and to respond to specific arguments raised by the requester. An updated detailed written justification is not required, however, and the registered entity may opt instead to rely on its original justification. In such cases, the Commission's decision would consider the registered entity's detailed written justification submitted under regulation 40.8(c) and the FOIA requester's response to it, if any. Because the comments reflect some confusion in this regard, the Commission proposes to further amend proposed regulation 40.8(c) to clarify that appeal rights and subsequent FOIA requests in which confidential treatment is an issue will continue to be governed by regulation 145.9.

Finally, the Commission is not persuaded by CME's argument that the proposed regulation would impose numerous costs on the Commission, registered entities and FOIA requesters. All of the purported costs and burdens cited by the exchange appear to be premised on its misunderstanding that issues of disclosure exist only in the context of the FOIA and that their resolution prior to receipt of a FOIA request would be premature as well as duplicative. As discussed above, it is the Commission's view that its ability to make information publicly available cannot depend upon circumstances outside its control—such as receipt of a FOIA request. Further, the registered

[22] The CME similarly cites a perceived burden on Commission staff, which may be ''inundated'' with detailed written justifications for every confidential treatment request where no FOIA request is pending.

[23] The Commission notes that the SEC specifies one procedure for requesting confidential treatment under the FOIA (17 CFR 200.83) and a separate procedure where the FOIA is not implicated. (17 CFR 240.24b–2) The latter applies to such filings as registration statements, reports, applications, statements or other documents filed pursuant to the Securities Exchange Act of 1934. Like the rule proposed by the Commission, the SEC regulation requires that a written justification be submitted simultaneously with the filing. An initial decision to grant or disallow a request for nondisclosure of information is not triggered by a FOIA request, and a submitter objecting to an initial decision to deny confidential treatment may petition the SEC for review of that decision.

[24] Letter dated August 20, 2007 from CME Group, at 2 and 3.

[25] Id. at 3.

entity may choose not to assume the burden and cost, if any, of updating its original detailed written justification in the event a subsequent FOIA request is received. The Commission nonetheless believes that fundamental fairness dictates that the registered entity be given the opportunity to do so. Finally, the exchange has not explained its claim that the proposed procedures would disadvantage FOIA requesters, either financially or otherwise.

D. Proposed Amendment to Appendix D—Submission Cover Sheet and Instructions

In 2004, the Commission amended the part 40 and 41 regulations to specify the portions of DTEF, DCO and DCM applications that are publicly available. At that time, the Commission also added Appendix D to the part 40 regulations prescribing a Submission Cover Sheet to accompany all self-certified rules, self-certified products, rules submitted for Commission approval, notifications of rule amendments, and non-material agricultural rule changes.[26] To this end, Appendix D included a copy of the Submission Cover Sheet along with step-by-step instructions for completing and returning the form to the Commission. The cover sheet assists Commission staff in preparing and maintaining the accuracy of the submissions being published on the Commission's Web site. In order to alert staff that a submission contains material that should not be published, the Commission proposes to amend the Submission Cover Sheet to include a prominently placed box to be checked when confidential treatment is being requested for any part of a submission filed pursuant to part 40 or 41. The Commission also proposes to amend Appendix D to part 40 to add an instruction to ensure that registered entities are fully aware that checking the ''confidential treatment requested'' box on the Submission Cover Sheet in no way obviates the submitter's responsibility to comply with the confidential treatment requirements established in proposed regulation 40.8(c) and will not substitute either for notice or for full compliance with those requirements.

E. Freedom of Information Act Amendments

Commission regulation 145.9(b) defines the scope of the Commission's confidential treatment regulations: Its provisions apply only where the Commission has not specified that an alternative procedure be utilized in connection with a particular study, report, investigation, or other matter. The Commission proposes to amend regulation 145.9(b) to reference the alternative procedure provided in regulation 40.8(c) for submissions filed under parts 40 and 41.

III. Cost-Benefit Analysis

Section 15(a) of the Act, as amended by section 119 of the CFMA, requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, section 15(a) as amended does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of a regulation outweigh its costs. Rather, section 15(a) simply requires the Commission to ''consider the costs and benefits'' of its action.

Section 15(a) of the Act further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could, in its discretion, give greater weight to any one of the five enumerated areas and could, in its discretion, determine that, notwithstanding its costs, a particular regulation was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The Commission is considering the costs and benefits of these proposed regulations in light of the specified provisions of section 15(a) of the Act:

1. Protection of market participants and the public. The proposed amendments should have no effect on the Commission's ability to protect market participants and the public.

2. Efficiency and competition. The proposed amendments are expected to benefit efficiency by making the non-confidential information from registered entity submissions available to the public in a more timely manner. The Commission anticipates that the costs of compliance with the confidential treatment procedures will be minimal. The proposed amendments should have no effect, from the standpoint of imposing costs or creating benefits, on competition in the futures and options markets.

3. Financial integrity of futures markets and price discovery. The amendments should have no effect, from the standpoint of imposing costs or creating benefits, on the financial integrity or price discovery function of the futures and options markets.

4. Sound risk management practices. The amendments being proposed herein should have no effect on the risk management practices of the futures and options industry.

5. Other public considerations. No additional public considerations could be determined.

After considering these factors, the Commission has determined to propose the rules and rule amendments set forth below. The Commission invites public comment on its application of the cost-benefit provision. Commenters also are invited to submit with their comment letters any data that they may have quantifying the costs and benefits of the proposal.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* (2000), requires federal agencies, in proposing regulations, to consider the impact of those regulations on small entities. The regulations proposed herein would affect derivatives transaction execution facilities, designated contract markets, and derivatives clearing organizations. The Commission previously has determined that the foregoing entities are not small entities for purposes of the RFA.[27] Accordingly, the Acting Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed regulations will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act of 1995

This proposed rulemaking contains information collection requirements. As required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3504(h), the Commission has submitted a copy of this section to the Office of Management and Budget (OMB) for its review.

Collection of Information: Rules Relating to part 40, Provisions Common to DCMs, DTEFs and DCOs, OMB Control Number 3038–0022.

The expected effect of the proposed amended regulations will be to increase the burden previously approved by OMB for this collection of information by 16 hours as it will result in the filing

[26] 69 FR 67503 (Nov. 18, 2004).

[27] 47 FR 18618, 18619 (April 30, 1982), discussing contract markets; 66 FR 42256, 42268 (August 10, 2001), discussing exempt boards of trade, exempt commercial markets and derivatives transaction execution facilities; 66 FR 45605, 45609 (August 29, 2001), discussing derivatives clearing organizations.

of approximately five additional pages when a registered entity files a detailed written justification and confidential appendix under Commission Regulations 40.2, 40.4, 40.5, and 40.6.

The estimated burden was calculated as follows:

Estimated number of respondents: 12.

Annual responses by each respondent: .30.

Total annual responses: 4.

Estimated average hours per response: 4.

Annual reporting burden: 16.

Collection of Information: Rules Relating to part 41, Security Futures Products, OMB Control Number 3038–0059.

The expected effect of the proposed amended regulations will be to increase the burden previously approved by OMB for this collection of information by 3.6 hours as it will result in the filing of approximately five additional pages when a registered entity files a detailed written justification and confidential appendix under Commission regulations 41.23 and 41.24.

Estimated number of respondents: 3.

Annual responses by each respondent: .30.

Total annual responses: .90.

Estimated average hours per response: 4.

Annual reporting burden: 3.6.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503; Attention: Desk Officer for the Commodity Futures Trading Commission.

In Compliance with the PRA, the Commission, through these proposed regulations, solicits comments to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, usefulness, and clarity of the information to be collected; and (4) minimize the burden of collecting information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. This does not affect the deadline for the public to comment to the Commission on the proposed regulations. Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5160.

List of Subjects

17 CFR Part 40

Commodity futures, Contract markets, Designation application, Reporting and recordkeeping requirements.

17 CFR Part 41

Security Futures.

17 CFR Part 145

Commission records and information.

For the reasons stated in the preamble, the Commission proposes to amend 17 CFR parts 40, 41, and 145 as follows:

PART 40—PROVISIONS COMMON TO CONTRACT MARKETS, DERIVATIVES TRANSACTION EXECUTION FACILITIES AND DERIVATIVES CLEARING ORGANIZATIONS

1. The authority citation for part 40 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6c, 7, 7a, 8 and 12a, as amended by appendix E of Pub. L. 106–554, 114 Stat. 2763A–365.

2. Section 40.2 is amended by adding paragraph (a)(3)(v) to read as follows:

§ 40.2 Listing Products for trading by certification.

(a) * * *

(3) * * *

(v) A request for confidential treatment as permitted under the procedures of § 40.8.

* * * * *

3. Section 40.3 is amended by revising paragraph (a)(7) to read as follows:

§ 40.3 Voluntary submission of new products for Commission review and approval.

(a) * * *

(7) Include a request for confidential treatment as permitted under the procedures of § 40.8.

* * * * *

4. Section 40.5 is amended by revising paragraph (a)(8) to read as follows:

§ 40.5 Voluntary submission of rules for Commission review and approval.

(a) * * *

(8) Include a request for confidential treatment as permitted under the procedures of § 40.8.

* * * * *

5. Section 40.6 is amended by adding new paragraph (a)(3)(vi) to read as follows:

§ 40.6 Self-certification of rules by designated contract markets and registered derivatives clearing organizations.

(a) * * *

(3) * * *

(vi) A request for confidential treatment as permitted under the procedures of § 40.8.

* * * * *

6. Section 40.8 is amended by adding new paragraphs (c) and (d) to read as follows:

§ 40.8 Availability of public information.

* * * * *

(c) A registered entity's filing of new products under the self-certification procedures, new products for Commission review and approval, new rules and rule amendments for Commission review and approval, and new rules and rule amendments submitted under the self-certification procedures will be treated as public information unless covered by a request for confidential treatment. If a registered entity files a request for confidential treatment, the following procedures will apply:

(1) A detailed written justification of the confidential treatment request must be filed simultaneously with the request for confidential treatment. The form and content of the detailed written justification shall be governed by § 145.9(e) of this chapter;

(2) All material for which confidential treatment is requested must be segregated in an appendix to the submission;

(3) The submission itself must indicate that material has been segregated and, as appropriate, redacted;

(4) Commission staff may make an initial determination with respect to the request for confidential treatment without regard to whether a request for the information has been sought under the Freedom of Information Act;

(5) A submitter of information under this Part may appeal an adverse decision by staff to the Commission's Office of General Counsel. The form and content of such appeal shall be governed by § 145.9(g) of this chapter.

(6) The grant of any part of a request for confidential treatment under this section may be reconsidered if a subsequent request under the Freedom of Information Act is made for the information.

(d) Commission staff will not consider requests for confidential treatment of information that is required to be made public under Section 5(d)(7) of the Act or Commission Regulations 40.3(a)(7) or 40.5(a)(8).

6. Appendix D is amended by adding a new sentence to the end of section 8, ''Other requirements,'' to read as follows:

Appendix D to Part 40—Submission Cover Sheet and Instructions

* * * * *

(8) *Other requirements*—* * * Checking the box marked ''confidential treatment requested'' on the Submission Cover Sheet does not obviate the submitter's responsibility to comply with all applicable requirements for requesting confidential treatment in Rule 40.8(c) and, where appropriate, Rule 145.9, and will not substitute for notice or full compliance with such requirements.

* * * * *

PART 41—SECURITY FUTURES PRODUCTS

7. The authority citation for part 41 continues to read as follows:

Authority: Sections 206, 251 and 252, Pub. L. 106–554, 114 Stat. 2763, 7 U.S.C. 1a, 2, 6f, 6j, 7a–2, 12a; 15 U.S.C. 78g(c)(2).

8. Section 41.23 is amended by adding new paragraph (a)(7) to read as follows:

§ 41.23 Listing of security futures products for trading.

(a) * * *

(7) Includes a request for confidential treatment as permitted under the procedures of § 40.8.

* * * * *

9. Section 41.24 is amended by adding new paragraph (a)(6) to read as follows:

§ 41.24 Rule amendments to security futures products.

(a) * * *

(6) Includes a request for confidential treatment as permitted under the procedures of § 40.8.

* * * * *

PART 145—COMMISSION RECORDS AND INFORMATION

10. The authority for part 145 continues to read as follows:

Authority: Pub. L. 99–570, 100 Stat. 3207; Pub. L. 89–554, 80 Stat. 383; Pub. L. 90–23, 81 Stat. 54; Pub. L. 98–502, 88 Stat. 1561–1564 (5 U.S.C. 552); Sec. 101(a), Pub. L. 93–463, 88 Stat. 1389 (5 U.S.C. 4a(j)); unless otherwise noted.

11. Section 145.9 is amended by revising paragraph (b) to read as follows:

§ 145.9 Petition for confidential treatment of information submitted to the Commission.

* * * * *

(b) Scope. The provisions of this section shall apply only where the Commission has not specified that an alternative procedure be utilized in connection with a particular study, report, investigation, or other matter. *See* § 40.8 for procedures to be utilized in connection with filing information required to be filed pursuant to 17 CFR parts 40 and 41.

* * * * *

Issued in Washington, DC on July 23, 2008, by the Commission.

David Stawick,

Secretary of the Commission.

[FR Doc. E8–17529 Filed 7–31–08; 8:45 am]

BILLING CODE 6351–01–P

DELAWARE RIVER BASIN COMMISSION

18 CFR Part 410

Proposed Amendments to the Water Code and Comprehensive Plan To Implement a Revised Water Audit Approach to Identify and Control Water Loss

AGENCY: Delaware River Basin Commission.

ACTION: Proposed rule; notice of public hearing.

SUMMARY: The Delaware River Basin Commission (''Commission'' or ''DRBC'') will hold a public hearing to receive comments on proposed amendments to the Commission's *Water Code* and *Comprehensive Plan* to phase in a requirement for water purveyors to follow a revised water audit approach to identify and control water loss.

DATES: Comments: Written comments must be received by 5 p.m. October 3, 2008.

Meeting and public hearing: The Commission will hold an informational meeting on Wednesday, September 10, 2008 from 4 p.m. to 6 p.m. The Commission also will hold a public hearing on Thursday, September 25, 2008 at the Commission's office building. The hearing will begin at 1:30 p.m. and will continue until all those who wish to testify are afforded an opportunity to do so. For more information regarding the procedures for these hearings and comments, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The informational meeting and public hearing will be held at the Commission's office building, which is located at 25 State Police Drive, West Trenton, New Jersey. Driving directions are available on the Commission's Web site—*http://www.drbc.net.* Please do not rely on Internet mapping services as they may not provide accurate directions to the DRBC.

FOR FURTHER INFORMATION, CONTACT: For further information, please contact Pamela Bush, Commission Secretary and Assistant General Counsel, Delaware River Basin Commission, at 609–883–9500 ext. 203.

SUPPLEMENTARY INFORMATION: Persons wishing to testify at the public hearing are asked to register in advance by phoning Ms. Paula Schmitt at 609–883–9500, ext. 224.

Written comments may be submitted as follows: If by e-mail, to *paula.schmitt@drbc.state.nj.us;* if by fax, to Commission Secretary at 609–883–9522; if by U.S. Mail, to Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628–0360; or if by overnight mail, to Commission Secretary, DRBC, 25 State Police Drive, West Trenton, NJ 08628–0360. In all cases, please include the commenter's name, address and affiliation, if any, in the comment document and include ''Water Audit'' in the subject line.

Background. An estimated 150 million gallons of treated and pressurized water is physically lost from public water supply distribution systems in the Delaware River Basin per day and current methods to account for, track and reduce this loss are inadequate.

The purpose of the proposed amendments is to phase in a program requiring water purveyors to perform a water audit and report their findings in accordance with a new audit structure established by the American Water Works Association (AWWA) and the International Water Association (IWA). These new methods are widely regarded as superior to the existing approach, which entails tracking ''unaccounted for water,'' which is no longer considered best practice.

The new water audit methodology provides a rational approach that will facilitate more consistent tracking and reporting than the existing approach allows. It will help water managers and regulators, including the Commission, state agencies, and utility managers, target their efforts to improve water supply efficiency, thereby reducing water withdrawals. Improving water accountability will contribute to achieving objective 1.3.C of the *Water Resources Plan for the Delaware River Basin,* which calls for ensuring

maximum feasible efficiency of water use across all sectors.

The Commission's Water Management Advisory Committee (WMAC), which has taken primary responsibility for reviewing the proposed audit methodology and developing these amendments, is composed of representatives from a wide range of public and private sector organizations. WMAC membership includes: Mr. Ferdows Ali, Environmental Scientist with the New Jersey Department of Agriculture; Ms. Janet L. Bowers, Executive Director of the Chester County Water Resources Authority; Mr. Gerald Esposito, President of Tidewater Utilities; Mr. David Froehlich, of the Wissahickon Valley Watershed Association; Mr. David Jostenski, Chief of the Water Use Assessment Section of the Pennsylvania Department of Environmental Protection; Mr. Mark Hartle, of the Pennsylvania Fish & Boat Commission, Division of Environmental Services; Mr. Stewart Lovell, Supervisor of Water Allocations of the Delaware Department of Natural Resources and Environmental Control; Mr. John Mello, of Region II of the U.S. Environmental Protection Agency; Mr. Bruno M. Mercuri, of Mercuri and Associates, Inc.; Dr. Joseph A. Miri, of the New Jersey Department of Environmental Protection, Water Supply Element; Mr. Robert Molzahn, of the Water Resources Association of the Delaware River Basin; Mr. Howard Neukrug, of the Philadelphia Water Department; Ms. Mary Ellen Noble, of the Delaware Riverkeeper Network; Ms. Senobar Safafar, of the New York City Department of Environmental Protection, Strategic Services Division, Bureau of Water Supply; Mr. Tom Simms, Director of the Institute of Soil and Environmental Quality of the University of Delaware DGS Annex; Mr. Ronald A. Sloto, of the U.S. Geological Survey, Water Resources Division; Ms. Edith Stevens, of the League of Women Voters; and Mr. Glen Stevens, of the U.S. Army Corps of Engineers.

On May 25, 2004, the WMAC established a subcommittee to investigate the issue of water loss and water accountability in light of new methods proposed by the American Water Works Association (AWWA) and the International Water Association (IWA). The subcommittee met on four occasions to review the Commission's current policies concerning water loss and water accountability and to discuss the new methods. The DRBC's current policies are based on the concept of ''unaccounted for water,'' which is no longer considered best practice. The new methods are based upon more precise definitions and more rational accounting procedures that will result in a clearer understanding on the part of utility managers and regulators of the causes of water loss. The new methods will thus facilitate targeted improvements that reduce system water demands, with region-wide benefits. DRBC staff participated in the development of water audit software based on the new accounting methods, in an effort led by the AWWA Water Loss Control Committee (WLCC).

On March 16, 2005, after listening to a presentation outlining the benefits of the new water accountability methods, the DRBC Commissioners asked DRBC staff and the WMAC to develop a position statement and policy recommendations for the Commission and to engage water purveyors in the Basin in a pilot study of the newly developed water audit software in order to test the software and solicit feedback.

Six water purveyors from the Delaware River Basin were identified to participate in the nationwide pilot study. The comments and feedback provided to AWWA led to improvements in the software. In March 2006, the software was approved by the AWWA WLCC and was posted on the AWWA Web site, where it is available at no charge to all users. Links to the software are posted on the water conservation page of the DRBC Web site: *http://www.state.nj.us/drbc/policy.htm.*

The WMAC and its subcommittee determined that the IWA/AWWA water audit methodology represents an improvement to the Commission's current practices and can lead to multiple benefits for water utilities and other stakeholders. It is anticipated that adoption of the IWA/AWWA approach will:

- Improve upon the traditional approach for identifying ''unaccounted for water,'' which lacks standardized terminology and a clearly defined water audit structure.
- Provide a rational water audit structure to help identify water losses and improve water supply system efficiency.
- Provide meaningful performance indicators to help identify systems with the greatest losses. These indicators allow water utility managers to make reliable comparisons of performance and to identify best practices to control water loss in an economical way.
- Identify ways to improve water supply efficiency and thereby reduce water withdrawals that have no beneficial end use.
- Help to target efforts to reduce the estimated 150 million gallons per day that is physically lost from public water supply distribution systems in the Basin.
- Enhance utility revenues by enabling utility managers to recover the significant revenue that is otherwise lost due to apparent losses such as theft of service, unbilled connections, meter discrepancies and data errors.
- Help utility managers and regulators identify real losses (such as leakage) that waste treated and pressurized water and increase operating costs. Significant real losses indicate opportunities for improved asset management that can reduce the vulnerability of utilities to disruptive water main breaks, other service disruptions and water quality upsets.

Because the water audit approach is relatively new in a regulatory context, the proposed amendments call for phased implementation. Until 2011, the DRBC will promote the voluntary use of the IWA/AWWA water audit program. During this period, information will be gathered from within the Basin and nationwide to assist in the establishment of performance indicators for water loss, which ultimately will replace the ''unaccounted for water'' targets. If approved, the proposed amendments will require water purveyors to perform an annual water audit conforming to the IWA/AWWA methodology, beginning in calendar year 2012.

The proposed amendments also require changes in the way data pertaining to water loss are collected by the state agencies and shared with DRBC.

The text of the proposed *Water Code* amendments is available on the DRBC Web site, *drbc.net.* A copy can also be obtained by contacting Paula Schmitt at 609–883–9500, ext. 224.

Dated: July 28, 2008.

Pamela M. Bush,

Commission Secretary.

[FR Doc. E8–17661 Filed 7–31–08; 8:45 am]

BILLING CODE 6360–01–P

RAILROAD RETIREMENT BOARD

20 CFR Part 220

RIN 3220–AB62

Removal of Listing of Impairments and Related Amendments

AGENCY: Railroad Retirement Board

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board proposes to remove the Listing of Impairments within our regulations. The Board's Listing of Impairments (the

Listings) are out of date and no longer reflect advances in medical knowledge, treatments, and methods of evaluation. The proposed amendments will provide public notice as to how the Railroad Retirement Board will determine disability after removal of the Listings.

DATES: Comments should be submitted on or before September 30, 2008.

ADDRESSES: You may submit comments identified by RIN number 3220–AB62, by any of the following methods:

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

Fax: (312) 751–3336. *Mail:* Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611. *Hand Delivery/Courier:* Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4945, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: We propose to remove and reserve the entire Part A and Part B that comprise the Listing of Impairments (the Listings), as well as the introductory paragraphs, in Appendix 1 of part 220, Title 20, of the Board's regulations. The Listings are used to evaluate disability under the Railroad Retirement Act (RRA). When the Listings were originally published on March 28, 1991 (56 FR 12980), they conformed to the criteria used to evaluate disability under the Social Security Act. The basis for this conformity is that disability for any ''regular work'' under the RRA is defined by reference as an inability to engage in any ''substantial gainful activity'' as that term is used in the Social Security Act, and courts have held that disability for ''regular employment'' as that term is used in the RRA has the same meaning as disability for ''substantial gainful activity'' as that term is used in the Social Security Act. *See,* for example, *Peppers* v. *Railroad Retirement Board,* 728 F.2d 404 (7th Cir. 1984). For this reason, many of the Board's regulations used to determine disability parallel the regulations of the Social Security Administration in subpart P, part 404 of title 20 [Determining Disability and Blindness].

What Programs Would the Proposed Rule Affect?

The Board pays benefits based on disability for any regular work to insured employees, surviving spouses and surviving children disabled prior to age 22, as well as benefits based on disability for one's regular railroad occupation to insured employees who meet additional service requirements. The Listing of Impairments is used in the evaluation of claims based on disability for benefits under the RRA.

How Is Disability Defined?

Disability under the RRA means that an otherwise qualified claimant is unable either to do his or her past regular railroad occupation, or to do any other regular work, as a result of a medically determinable physical or mental impairment, or combination of impairments, expected to result in death or which has lasted or is expected to last for a continuous period of at least 12 months. The difference in eligibility for an ''occupational'' disability or a disability for any ''regular work'' is based on the employee's years of service or age and his or her current connection to the railroad industry.

How Is Disability Determined?

The Board, in general, follows a sequential method of evaluating disability which takes into consideration the claimant's current work activity, if any, and then considers all medical evidence. If a claimant cannot be found to be disabled based on medical factors alone, the Board then considers vocational factors such as age, education and work experience.

The five steps used to evaluate disability for any regular employment under the Act, set out in section 220.100 of the Board's regulations, parallel the steps in section 404.1520 of the regulations of the Social Security Administration used to determine disability for a period of disability, disability insurance benefits, child's insurance benefits based on disability and widow(er)'s insurance benefits based on disability for months after 1990.

The first step of that sequence is to determine if the claimant is working and if so, if that work is substantial gainful activity (SGA). If it is, then the claimant is not disabled, regardless of his or her impairments. If the claimant is not working in SGA, the second step is to evaluate the medical severity of the impairment or combined impairments. If the impairment(s) is not so severe that it significantly limits the claimant's ability to do basic work activities, the claim is denied. If it does, and the impairment(s) has lasted or is expected to last for at least 12 months, or is expected to result in death, the third step is to determine whether the impairment(s) meets or is medically equal to an impairment listed in appendix 1 of that part. If so, the claimant is disabled. It is this step that would be changed by these proposed amendments. If the claimant is not disabled based on medical factors alone, the fourth step is to determine the claimant's residual functional capacity and whether his or her impairment(s) prevents the performance of the physical and mental demands of his or her past relevant work. If the claimant can still perform that work, then he or she is not disabled. If he or she cannot, then the Board determines, at the fifth step, whether there exists other work in the national economy which an individual of the claimant's age, education, work experience and residual functional capacity can be expected to perform. If such work exists, disability is denied. Otherwise disability is allowed.

What Is the Listing?

The Listing of Impairments sets out the medical criteria used to determine whether a claimant's impairment(s) is so severe that he or she is disabled based on medical factors alone. The listing is currently considered at the first step of the sequence followed when evaluating a claimant's disability for work in his or her regular railroad occupation, as set out in section 220.13 of the Board's regulations, and at the third step of the sequence followed when evaluating disability for any regular work, as set out in section 220.100. The listing is in two parts. Part A lists the criteria used to evaluate impairments of individuals age 18 or older. Part B lists the criteria used to evaluate the impairments of children under age 18. Each part of the listing is organized by body systems, and each body system has an introductory text explaining types of evidence and other factors to be considered when evaluating the medical documentation of impairments of that body system for disability. The introductory text is followed by a list of impairments and the specific medical criteria which must be met or equaled for that impairment to be so severe that it precludes the performance of any regular work.

How Is the Listing Used?

The Board currently uses the listing to decide whether an individual is disabled or is still disabled. A claimant who is not working for an employer covered under the Act and who is not doing work that is substantial gainful activity, will be found to be disabled if his or her impairment(s) meets or equals the medical criteria of a listed impairment.

The listing is not used to deny a claim of disability. If a claimant's

impairment(s) is severe, but does not meet or medically equal any of the impairments in the listing, the evaluation process continues on the basis of vocational factors such as the ability to perform past work, age, education, and past work experience. The listing is also not used to determine that disability has ended because an individual's impairment(s) no longer meets or equals a listed impairment, or because the listing or its medical criteria has changed. If a listing changes and entitlement was based on the individual's impairment(s) having met or equaled a listed impairment, the Board will continue to use the criteria of the listing in effect at the time of the last favorable decision when conducting a review for continuing disability. If the individual's condition is found to have improved to where his or her impairment(s) no longer medically meets or equals the prior listing, the Board must determine whether the medical improvement is related to the individual's ability to work, and will consider all circumstances of the case before deciding whether the individual is currently disabled.

What Problem Does This Proposed Rule Address?

When the Board last published final rules for the listing on March 28, 1991 (56 FR 12980), it contained the same medical criteria as were then in the regulations of the Social Security Administration at Parts A and B of the Listing of Impairments in Appendix 1 to Subpart P, Part 404 of Title 20. This is because disability for ''regular employment'' as that term is used in the RRA, has been held to have the same meaning as disability for ''substantial gainful activity'' as that term is used in the Social Security Act. As such, the criteria used by the Board to determine whether a claimant's impairment(s) is medically so severe that it prevents any regular work at the third step of evaluation for disability under the RRA, should essentially be the same as the standards used at the third step of evaluating disability for any substantial gainful activity under Title II of the Social Security Act. Since 1991, however, SSA has amended its Listing of Impairments to reflect advances in medical knowledge, treatments and methods of evaluation. Amendments include the addition of a 14th body system; the renaming of body systems; the expansion of introductory texts; the removal or addition of listed impairments from body systems; and changes in the specific medical criteria needed to meet some impairments. As a result, the impairments and criteria listed in the Board's regulations for use in determining disability based on medical factors alone no longer conform with the criteria followed by SSA.

How Does This Proposed Rule Address That Problem?

This proposed rule would re-establish consistency in the evaluation of impairments of individuals under both Acts. The Board has determined that even regular updating of its Listings would result in only temporary conformity with the criteria in SSA's Listing of Impairments. This is because SSA's medical listing rules for each body system contains a sunset provision of four to eight years in length, to ensure that the criteria used to determine disability reflects changes brought about by continual advancements in medical knowledge, treatments and methods of evaluation.

Furthermore, the Board is prohibited by regulation from incorporating by reference the regulations of the Social Security Administration or any other agency. Section 21.21 of the regulations issued by the Administrative Committee of the **Federal Register** (composed of the Archivist of the United States, an officer of the Department of Justice designated by the Attorney General, the Public Printer, and the Director of the Federal Register) provides that:

(c) Each agency shall publish its own regulations in full text. Cross-references to the regulations of another agency may not be used as a substitute for publication in full text, unless the Office of the Federal Register finds that the regulation meets any of the following exceptions:

(1) The reference is required by court order, statute, Executive order or reorganization plan.

(2) The reference is to regulations promulgated by an agency with the exclusive legal authority to regulate in a subject matter area, but the referencing agency needs to apply those regulations in its own programs.

(3) The reference is informational or improves clarity rather than being regulatory.

(4) The reference is to test methods or consensus standards produced by a Federal agency that have replaced or preempted private or voluntary test methods or consensus standards in a subject matter area.

(5) The reference is to the Department level from a subagency. (1 CFR 21.21(c)).

The Listing of Impairments does not fall within any of the exceptions listed in section 21.21(c).

The Board has therefore decided that the most efficient and cost effective approach would be to remove and reserve the entire Appendix 1 to Part 220—Listing of Impairments, parts A and B, and to replace references in Part 220 of the Board's regulations to disability based on an impairment listed in the Listing of Impairments with rules that describe when the Board will find that a claimant is ''medically disabled.'' A definition of the term ''medically disabled'' to mean disability based solely on impairment(s), which are considered to be so medically severe as to prevent a person from doing any substantial gainful activity, will be set out in amended § 220.110(a), with § 220.110 also discussing the evidence that will be used by the Board in making that determination.

It is not the Board's intent in removing Appendix I to change or nullify any administrative ruling or opinion of the Board's General Counsel presently applicable in determining whether an impairment is medically disabling. Section 220.100(b)(3), the third step in evaluating a claim for disability for any regular employment, is amended to *Impairment(s) medically disabling,* and will be based, in part, on ''whether the severity of the impairment(s) would fall within any of the impairments included in the Listing of Impairments as issued by the Social Security Administration and as amended from time to time (20 CFR part 404, Subpart P, Appendix 1) or whether the impairment(s) meet such other criteria which the agency by administrative ruling of general applicability has determined to be medically disabling.'' Reference to the guidelines in § 220.100(b)(3) have been added to § 220.13(a), the first step when evaluating a claim for occupational disability. Section 220.61(c)(4) has been revised to explain that the elements of a complete examining physician's report will be based in part on the results of testing performed as stated in the Board's directions. Section 220.111, which had discussed medical equivalence, when a listed impairment did not meet the requirements set forth in the Listing of Impairments, has been removed and reserved as no longer relevant to the determination of disability under the Railroad Retirement Act. Reference to that section has been removed from § 220.114(d)(3). The Board will continue to follow the guidelines on medical equivalence set forth in the regulations of the Social Security Administration at 20 CFR 404.1526 when determining if a claimant is disabled under the Social Security Act for Medicare entitlement. References to impairment(s), which

medically meet and/or equal the severity of impairments in the Listing of Impairments, have been revised to refer to impairment(s) that is medically disabling in §§ 220.100(b)(4); 220.101(c)(2); 220.101(c)(3); 220.112(e); 220.114(d)(2); 220.120(e); 220.177(c); 220.177(d)(1); 220.178(c)(1); 220.178(c)(3); 220.179(a)(4)(iii); 220.180(b); and 220.180(c). Reference to the Listing as the source of information on new or improved medical techniques considered when determining whether an annuitant is still disabled has been removed, as if an annuitant is found to be no longer disabled for that reason, that finding will be explained to the annuitant when such a determination is made. Reference to the Listings has been removed from § 220.179(a)(4)(i). A spelling error is corrected in § 220.181, and the criteria in examples of permanent impairments where medical improvement is not expected have been clarified in § 220.186.

The Board, with the concurrence of the Office of Management and Budget, has determined that this rule is not a significant regulatory action within the meaning of Executive Order 12866. Therefore, no regulatory impact analysis is required.

List of Subjects in 20 CFR Part 220

Railroad retirement, Disability benefits.

PART 220—[AMENDED]

For the reasons set out in the preamble, the Railroad Retirement Board proposes to amend Title 20, Chapter II, part 220, Determining Disability, as follows:

1. The authority citation for part 220 continues to read as follows:

Authority: 45 U.S.C. 231a; 45 U.S.C. 231f.

2. In § 220.13, revise paragraph (a) to read as follows:

§ 220.13 Establishment of permanent disability for work in regular railroad occupation.

* * * * *

(a) The Board evaluates the employee's medically documented physical and mental impairment(s) to determine if the employee is medically disabled. In order to be found medically disabled, the employee's impairments must be severe enough to prevent a person from doing any substantial gainful activity. The Board makes this determination based on the guidelines set out in § 220.100(b)(3). If the Board finds that an employee has an impairment which is medically disabling, it will find the employee disabled for work in his or her regular occupation without considering the duties of his or her regular occupation.

* * * * *

3. In § 220.61, revise paragraph (c)(4) to read as follows:

§ 220.61 Informing the examining physician or psychologist of examination scheduling, report content and signature requirements.

* * * * *

(c) * * *

(4) The results of laboratory and other tests (e.g., x-rays) performed according to the requirements stated in the Board's directions to the examining physician or psychologist.

* * * * *

4. In § 220.100, revise paragraphs (b)(3) and (b)(4) to read as follows:

§ 220.100 Evaluation of disability for any regular employment.

* * * * *

(b) * * *

(3) *Impairment(s) is medically disabling.* If the claimant has an impairment or a combination of impairments which meets the duration requirement and which the Board finds is medically disabling, the Board will find the claimant disabled without considering his or her age, education or work experience. In determining whether an impairment or combination of impairments is medically disabling, the Board will consider factors such as the nature and limiting effects of the impairment(s); the effects of the treatment the claimant has undergone, is undergoing, and/or will continue to undergo; the prognosis for the claimant; medical records furnished in support of the claimant's claim; whether the severity of the impairment(s) would fall within any of the impairments included in the Listing of Impairments as issued by the Social Security Administration and as amended from time to time (20 CFR part 404, Subpart P, Appendix 1); or whether the impairment(s) meet such other criteria which the agency by administrative ruling of general applicability has determined to be medically disabling.

(4) Impairment(s) must prevent past relevant work. If the claimant's impairment or combination of impairments is not medically disabling, the Board will then review the claimant's residual functional capacity (see § 220.120) and the physical and mental demands of past relevant work (see § 220.130). If the Board determines that the claimant is still able to do his or her past relevant work, the Board will find that he or she is not disabled. If the claimant is unable to do his or her past relevant work, the Board will follow paragraph (b)(5) of this section.

* * * * *

5. In § 220.101, revise paragraphs (c)(2) and (c)(3) to read as follows:

§ 220.101 Evaluation of mental impairments.

* * * * *

(c) * * *

(2) If the claimant's mental impairment(s) is severe, the Board must then determine if it is medically disabling using the Board's prior conclusions based on this procedure (i.e., the presence of certain medical findings considered by the Board as especially relevant to a claimant's ability to work and the Board's rating of functional loss resulting from the mental impairment(s)).

(3) If the claimant has a severe impairment(s), but the impairment(s) is not medically disabling, the Board will then do a residual functional capacity assessment for those claimants (employees, widow(er)s, and children) whose applications are based on disability for any regular employment under the Railroad Retirement Act.

* * * * *

6. Revise § 220.110 to read as follows:

§ 220.110 Medically Disabled

(a)''*Medically disabled.*'' The term ''medically disabled'' refers to disability based solely on impairment(s) which are considered to be so medically severe as to prevent a person from doing any substantial gainful activity. The Board will base its decision about whether the claimant's impairment(s) is medically disabling on medical evidence only, without consideration of the claimant's residual functional capacity, age, education or work experience. The Board will also consider the medical opinion given by one or more physicians employed or engaged by the Board or the Social Security Administration to make medical judgments. The medical evidence used to establish a diagnosis or confirm the existence of an impairment, and to establish the severity of the impairment includes medical findings consisting of signs, symptoms and laboratory findings. The medical findings must be based on medically acceptable clinical and laboratory diagnostic techniques. If the claimant has more than one impairment, but none of the impairments, by themselves, is medically disabling, the Board will review the signs, symptoms, and laboratory findings of all of the impairments to determine whether the combination of impairments is medically disabling. In general,

impairments that the Board considers to be medically disabling are:

(1) Permanent;

(2) Expected to result in death; or

(3) Have a specific length of duration.

(b) *Diagnosis of impairments.* A diagnosis of a particular impairment is not sufficient for a finding of medical disability, unless the diagnosis is supported by medical findings that are based on medically acceptable clinical and laboratory techniques.

(c) *Addiction to alcohol or drugs.* If a claimant has a condition diagnosed as addiction to alcohol or drugs, this condition will not, by itself, be a basis for determining whether the claimant is, or is not, disabled. As with any other medical condition, the Board will decide whether the claimant is disabled based on symptoms, signs, and laboratory findings.

§ 220.111 [Removed and Reserved]

7. Remove and reserve § 220.111.

8. In § 220.112, revise paragraph (e) introductory text and Example 1 to read as follows:

§ 220.112 Conclusions by physicians concerning the claimant's disability.

* * * * *

(e) *Medical opinions that will not be considered conclusive nor given extra weight.* The Board will not consider as conclusive nor give extra weight to medical opinions which are not in accord with the statutory or regulatory standards for establishing disability. Thus, opinions that the individual's impairments are medically disabling where the medical findings which are the basis for that conclusion would not support an impairment so severe as to preclude any substantial gainful activity will not be conclusive nor given extra weight. Likewise, an opinion(s) as to the individual's residual functional capacity which is not in accord with regulatory requirements set forth in §§ 220.120 and 220.121 will not be conclusive nor given extra weight.

Example 1: A medical opinion states that a claimant is disabled based on blindness, but findings show functional visual accuity in the better eye, after best correction, of 20/100. That medical opinion would not be conclusive or given extra weight.

* * * * *

9. In § 220.114, remove paragraph (d)(2), redesignate paragraphs (d)(3) and (d)(4) as paragraphs (d)(2) and (d)(3), and revise the newly redesignated paragraphs (d)(2) and (d)(3) to read as follows:

§ 220.114 Evaluation of symptoms, including pain.

* * * * *

(d) * * *

(2) *Decision of whether impairment(s) is medically disabling.* The Board will not substitute the claimant's allegations of pain or other symptoms for a missing or deficient sign or laboratory finding to raise the severity of the claimant's impairment(s) to that of being medically disabling. If the symptoms, signs, and laboratory findings of the claimant's impairment(s) are found by the Board to be so severe as to prevent any substantial gainful activity, the Board will find the claimant disabled. If it does not, the Board will consider the impact of the claimant's symptoms on the claimant's residual functional capacity. (*See* paragraph (d)(3) of this section.)

(3) *Impact of symptoms (including pain) on residual functional capacity.* If the claimant has a medically determinable severe physical or mental impairment(s), but the claimant's impairment(s) is not medically disabling, the Board will consider the impact of the claimant's impairment(s) and any related symptoms, including pain, on the claimant's residual functional capacity. (*See* § 220.120 of this part.)

10. In § 220.120, revise paragraph (e) to read as follows:

§ 220.120 The claimant's residual functional capacity.

* * * * *

(e) *Total limiting effects.* When the claimant has a severe impairment(s), but the claimant's symptoms, signs, and laboratory findings are not medically disabling, the Board will consider the limiting effects of all of the claimant's impairment(s), even those that are not severe, in determining the claimant's residual functional capacity. Pain or other symptoms may cause a limitation of function beyond that which can be determined on the basis of the anatomical, physiological or psychological abnormalities considered alone; e.g., someone with a low back disorder may be fully capable of the physical demands consistent with those of sustained medium work activity, but another person with the same disorder, because of pain, may not be capable of more than the physical demands consistent with those of light work activity on a sustained basis. In assessing the total limiting effects of the claimant's impairment(s) and any related symptoms, the Board will consider all of the medical and non-medical evidence, including the information described in § 220.114 of this part.

11. In § 220.177:

a. Amend paragraph (c) by revising the second paragraph of Example 2; and

b. Revise paragraph (d)(1)

The revisions read as follows:

§ 220.177 Terms and definitions.

* * * * *

(c) * * *

Example 2: * * *

Medical improvement has occurred because there has been a decrease in the severity of the annuitant's impairments as shown by x-ray and clinical evidence of solid union and his return to full weight-bearing. This medical improvement is related to his ability to work because these findings no longer support an impairment of the severity of the impairment on which the finding that he was medically disabled was based (see § 220.178(c)(1)). Whether or not the annuitant's disability is found to have ended will depend on the Board's determination as to whether he can currently engage in substantial gainful activity.

(d) * * *

(1) Under the law, disability is defined, in part, as the inability to do any regular employment by reason of a physical or mental impairment(s). ''Regular employment'' is defined in this part as ''substantial gainful activity.'' In determining whether the annuitant is disabled under the law, the Board will measure, therefore, how and to what extent the annuitant's impairment(s) has affected his or her ability to do work. The Board does this by looking at how the annuitant's functional capacity for doing basic work activities has been affected. Basic work activities means the abilities and aptitudes necessary to do most jobs. Included are exertional abilities such as walking, standing, pushing, pulling, reaching and carrying, and non-exertional abilities and aptitudes such as seeing, hearing, speaking, remembering, using judgment, dealing with changes in a work setting and dealing with both supervisors and fellow workers. The annuitant who has no impairment(s) would be able to do all basic work activities at normal levels; he or she would have an unlimited functional capacity to do basic work activities. Depending on its nature and severity, an impairment(s) will result in some limitation to the functional capacity to do one or more of these basic work activities. Diabetes, for example, can result in circulatory problems which could limit the length of time the annuitant could stand or walk and can result in damage to his or her eyes as well, so that the annuitant also had limited vision. What the annuitant can still do, despite his or her impairment(s), is called his or her residual functional capacity. How the residual functional capacity is assessed

is discussed in more detail in § 220.120. Unless an impairment is so severe that it is deemed to prevent the annuitant from doing substantial gainful activity (i.e., the impairment(s) is medically disabling), it is this residual functional capacity that is used to determine whether the annuitant can still do his or her past work or, in conjunction with his or her age, education and work experience, do any other work.

* * * * *

12. In § 220.178, revise paragraphs (c)(1) and (c)(3) to read as follows:

§ 220.178 Determining medical improvement and its relationship to the annuitant's ability to do work.

* * * * *

(c) * * *

(1) *Previous impairment was medically disabling.* If the Board's most recent favorable decision was based on the fact that the annuitant's impairment(s) at that time was medically disabling, an assessment of his or her residual functional capacity would not have been made. If medical improvement has occurred and the severity of the prior impairment(s) is supported by current medical findings, the Board will find that the medical improvement was related to the annuitant's ability to work. If the medical findings support impairment(s) that is currently so severe as to be medically disabling, the annuitant is deemed, in the absence of evidence to the contrary, to be unable to engage in substantial gainful activity. If there has been medical improvement to the degree that the impairment(s) is not currently medically disabling, then there has been medical improvement related to the annuitant's ability to work. The Board must, of course, also establish that the annuitant can currently engage in gainful activity before finding that his or her disability has ended.

* * * * *

(3) *Prior residual functional capacity assessment should have been made, but was not.* If the most recent favorable medical decision should have contained an assessment of the annuitant's residual functional capacity (i.e., his or her impairment(s) was not medically disabling) but does not, either because this assessment is missing from the annuitant's file or because it was not done, the Board will reconstruct the residual functional capacity. This reconstructed residual functional capacity will accurately and objectively assess the annuitant's functional capacity to do basic work activities. The Board will assign the maximum functional capacity consistent with an allowance.

Example: The annuitant was previously found to be disabled on the basis that while his impairment was not medically disabling, it did prevent him from doing his past or any other work. The prior adjudicator did not, however, include a residual functional capacity assessment in the rationale of that decision and a review of the prior evidence does not show that such an assessment was ever made. If a decrease in medical severity, i.e., medical improvement, has occurred, the residual functional capacity based on the current level of severity of the annuitant's impairment will have to be compared with his residual functional capacity based on its prior severity in order to determine if the medical improvement is related to his ability to do work. In order to make this comparison, the Board will review the prior evidence and make an objective assessment of the annuitant's residual functional capacity at the time of its most recent favorable medical determination, based on the symptoms, signs and laboratory findings as they then existed.

* * * * *

13. In § 220.179, revise paragraphs (a)(3)(ii) introductory text, (a)(4)(i) introductory text, and the example following paragraph (a)(4)(iii) to read as follows:

§ 220.179 Exceptions to medical improvement.

(a) * * *

(3) * * *

(ii) *How the annuitant will know which methods are new or improved techniques and when they become generally available.* The Board will let annuitants know which methods it considers to be new or improved techniques and when they become available.

* * * * *

(4) * * *

(i) Substantial evidence shows on its face that the decision in question should not have been made (e.g., the evidence in file such as pulmonary function study values was misread or an adjudicative standard such as a medical/vocational rule in appendix 2 of this part was misapplied).

* * * * *

(iii) * * *

Example: The annuitant was previously found entitled to a disability annuity on the basis of diabetes mellitus which the prior adjudicator believed was medically disabling. The prior record shows that the annuitant has ''brittle'' diabetes for which he was taking insulin. The annuitant's urine was 3+ for sugar, and he alleged occasional hypoglycemic attacks caused by exertion. His doctor felt the diabetes was never really controlled because he was not following his diet or taking his medication regularly. On review, symptoms, signs and laboratory findings are unchanged. The current adjudicator feels, however, that the annuitant's impairment clearly is not medically disabling. Error cannot be found because it would represent a substitution of current judgment for that of the prior adjudicator that the annuitant's impairment was medically disabling. The exception for error will not be applied retroactively under the conditions set out above unless the conditions for reopening the prior decision are met.

* * * * *

14. In § 220.180, revise paragraphs (b) and (c) to read as follows:

§ 220.180 Determining continuation or cessation of disability.

* * * * *

(b) If the annuitant is not engaging in substantial gainful activity, does he or she have an impairment or combination of impairments which is medically disabling? If the annuitant's impairment(s) is medically disabling, his or her disability will be found to continue;

(c) If the annuitant's impairment(s) is not medically disabling, has there been medical improvement as defined in § 220.177(a)? If there has been medical improvement as shown by a decrease in medical severity, see step (d). If there has been no decrease in medical severity, then there has been no medical improvement; (See step (e));

* * * * *

§ 220.181 [Amended]

15. In § 220.181 amend paragraph (i) by removing the word ''not'' and adding in its place the word ''no''.

16. In § 220.186(c) amend the definition for ''Permanent impairment, medical improvement not expected'' by removing the phrase ''§ 220.178(c)(4)'' and adding in its place the phrase ''§ 220.178(c)(3)'' and revise paragraphs (c)(1) through (c)(3) to read as follows:

§ 220.186 When and how often the Board will conduct a continuing disability review.

* * * * *

(c) *Definitions.* As used in this section—* * *

Permanent impairment medical improvement not expected—* * *

(1) Parkinsonian syndrome with significant rigidity, brady kinesia, or tremor in two extremities, which, singly or in combination, result in sustained disturbance of gross and dexterous movements, or gait and station.

(2) Amyotrophic lateral sclerosis, based on documentation of a clinically appropriate medical history, neurological findings consistent with the diagnosis of ALS, and the results of any electrophysiological and neuroimaging testing.

(3) Diffuse pulmonary fibrosis in an individual age 55 or older which

reduces FEV1 to 1.45 to 2.05 (L, BTPS) or less depending on the individual's height.

* * * * *

Appendix 1 to Part 220—[Removed and Reserved]

17. Remove and reserve Appendix 1 to part 220—Listing of Impairments.

Dated: July 23, 2008.

For The Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. E8–17333 Filed 7–31–08; 8:45 am]

BILLING CODE 7905–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 19

[Notice No. 86; Re: Notice No. 83; Docket No. TTB–2008–0004]

RIN 1513–AA23

Proposed Revision of Distilled Spirits Plant Regulations (2001R–194P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: In response to an industry member request, the Alcohol and Tobacco Tax and Trade Bureau extends the comment period for Notice No. 83, Proposed Revision of Distilled Spirits Plant Regulations, a notice of proposed rulemaking published in the **Federal Register** on May 8, 2008, for an additional 90 days.

DATES: Written comments on Notice No. 83 must now be received on or before November 5, 2008.

ADDRESSES: You may send comments on Notice No. 83 to one of the following addresses:

- *http://www.regulations.gov* (via the online comment form for this notice as posted within Docket No. TTB–2008–0004 on Regulations.gov, the Federal e-rulemaking portal); or
- *Mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412; or
- *Hand Delivery/Courier in lieu of Mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200–E, Washington, DC 20005.

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this notice, Notice No. 83, and any comments we receive about Notice No. 83 at *http://www.regulations.gov.* A direct link to the appropriate Regulations.gov docket is available under Notice No. 83 on the TTB Web site at *http://www.ttb.gov/spirits/spirits_rulemaking.shtml.* You also may view copies of this notice, Notice No. 83, and any comments we receive about Notice No. 83 by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. To make an appointment, call 202–927–2400.

FOR FURTHER INFORMATION CONTACT: Daniel J. Hiland, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 200–E, Washington, DC 20220; telephone 202–927–8176.

SUPPLEMENTARY INFORMATION: On May 8, 2008, the Alcohol and Tobacco Tax and Trade Bureau (TTB) published Notice No. 83, Proposed Revision of Distilled Spirits Plant Regulations, in the **Federal Register** (73 FR 26200). In that notice of proposed rulemaking, TTB requested public comment on its proposed comprehensive revision of the regulations governing distilled spirits plants. The 90-day comment period for Notice No. 83, when published, was scheduled to close on August 6, 2008.

After publication of Notice No. 83, TTB received a request from E. & J. Gallo Winery to extend the comment period for Notice No. 83 for an additional 120 days. Gallo, which operates three distilled spirits plants in California in addition to its wineries, noted in support of its request that it is preparing for the upcoming harvest season, ''the busiest and most important months of the year for our company.'' As a result, Gallo noted that it would be difficult for the company to focus its attention on the complexities of the proposed rule.

In response to this request, TTB extends the comment period for Notice No. 83 for an additional 90 days, which together with the original 90-day comment period will leave Notice No. 83 open to public comment for 6 months. We believe this time period will allow industry members and the public to fully consider the proposals outlined in Notice No. 83. Therefore, comments on Notice No. 83 are now due on or before November 5, 2008.

Drafting Information: Michael D. Hoover of the Regulations and Rulings Division drafted this notice.

Signed: July 29, 2008.

John J. Manfreda,

Administrator.

[FR Doc. E8–17676 Filed 7–31–08; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 409, 410, 411, 414, 415, 424, 485, and 486

[CMS–1403–CN]

RIN 0938–AP18

Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2009; and Revisions to the Amendment of the E-Prescribing Exemption for Computer Generated Facsimile Transmissions; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects several technical and typographical errors in the proposed rule that was issued on June 30, 2008 and appeared in the July 7, 2008 **Federal Register** (73 FR 38502). The proposed rule addressed Medicare Part B payment policy, including the physician fee schedule (PFS) that is applicable for calendar year (CY) 2009. The proposed rule also addressed refinements to relative value units (RVUs) and physician self-referral issues. Specifically, the errors pertain to the following provisions: Practice expense, telehealth services, competitive acquisition program (CAP), anti-markup provisions, and the Physician Quality Reporting Initiative.

FOR FURTHER INFORMATION CONTACT: Diane Milstead, (410) 786–3355.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. E8–14949 (73 FR 38502), the proposed rule entitled ''Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2009; and Revisions to the Amendment of the E-Prescribing Exemption for Computer Generated Facsimile Transmissions'' (hereinafter referred to as the CY 2009 PFS proposed rule), there were technical and typographical errors that are identified and corrected in this correction notice.

II. Summary of Errors

On page 38503, we are adding contact information for issues concerning educational requirements for nurse practitioners and clinical nurse specialists, and physician certification and recertification for Medicare home health services.

On page 38510, in the formula for equipment cost per minute, we inadvertently omitted an asterisk.

On page 38518, in the 1st column, we cited the incorrect chapter in the CMS Internet-Only Medicare Claims Processing Manual for more information concerning the instructions for the submission of interactive telehealth claims.

On page 38525, we are correcting a typographical error that clarifies that participating CAP physicians whose participation in the CAP has been suspended will not receive CAP drugs.

On page 38545, we are correcting a date cited in the CY 2009 PFS proposed rule that references the suit against the Secretary (*Atlantic Urological Associates PA* v. *Leavitt*, Civil Action No. 08–141–(RMC) (D.D.C.)).

On page 38569, in Table 11, we inadvertently omitted an asterisk on measure numbers 110 and 111 that inform the public that these proposed PQRI measures were being proposed as measures that could be reported through electronic health records (EHR).

On pages 38569 and 38571, we are correcting the footnotes to Tables 11 and 13, respectively, to state these measures are 1 of 17 measures for which data may potentially be accepted through the EHR mechanism in 2009.

On page 38576, we are correcting the language summarizing the current nurse practitioner qualification standards.

III. Correction of Errors

In FR Doc. E8–14949 of July 7, 2008 (73 FR 38502), make the following corrections:

1. On page 38503, in the 1st column, after the 11th paragraph, add the following:

''Regina Walker-Wren, (410) 786–9160, for information concerning educational requirements for nurse practitioners and clinical nurse specialists.

Randy Throndset, (410) 786–0131, for information concerning physician certification and recertification for Medicare home health services.''

2. On page 38510, in the 2nd column, line 1, the phrase ''rate) * life of the equipment)))) +'' is corrected to read ''rate) ** life of the equipment)))) +''.

3. On page 38518, in the 1st column;

a. In the 1st full paragraph, line 22, the phrase ''Chapter 15'' is corrected to read ''Chapter 12.''

b. In the 2nd full paragraph, line 19, the phrase ''Chapter 15'' is corrected to read ''Chapter 12.''

4. On page 38525, in the 1st column, in the 2nd paragraph, line 16, the phrase ''CAP has suspended'' is corrected to read ''CAP has been suspended.''

5. On page 38545, in the 2nd column; in the 1st full paragraph, line 1, the phrase ''On January 25, 2008'' is corrected to read ''On January 24, 2008.''

6. On page 38569, in Table 11,

a. Column 1, an asterisk is added to the title of measure numbers 110 and 111 to read as follows:

TABLE 11—2008 PQRI MEASURES PROPOSED FOR 2009

Measure number and title	Measure source
110. Preventive Care and Screening: Influenza Immunization for Patients ≥ 50 Years Old *	AMA–PCPI.
111. Preventive Care and Screening: Pneumonia Vaccination for Patients 65 Years and Older *	NCQA.

b. The footnote ''* This measure is one fifteen measures for which data may potentially be accepted through the EHR mechanism in 2009.'' is corrected to read ''* This measure is 1 of 17 measures for which data may potentially be accepted through the EHR mechanism in 2009.''

7. On page 38571, Table 13, the footnote ''* This measure is one fifteen measures for which data may potentially be accepted through the EHR mechanism in 2009.'' is corrected to read ''* This measure is 1 of 17 measures for which data may potentially be accepted through the EHR mechanism in 2009.''

8. On page 38576, in the 2nd column, in the 1st full paragraph, line 16, the phrase ''requirements, but not entirely date'' is corrected to read ''requirements that are not entirely date.''

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 28, 2008.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. E8–17732 Filed 7–31–08; 8:45 am]

BILLING CODE 4120–01–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 512 and 552

[GSAR Case 2008–G504; Docket 2008–0007; Sequence 11]

RIN 3090–AI61

General Services Acquisition Regulation; GSAR Case 2008–G504; Rewrite of GSAR Part 512, Acquisition of Commercial Items

AGENCY: Office of the Chief Acquisition Officer, General Services Administration (GSA).

ACTION: Proposed rule with request for comments.

SUMMARY: The General Services Administration (GSA) is proposing to amend the General Services Acquisition Regulation (GSAR) to revise the language pertaining to requirements for the acquisition of commercial items.

DATES: Interested parties should submit written comments to the Regulatory Secretariat on or before September 30, 2008 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by GSAR Case 2008–G504 by any of the following methods:

- Regulations.gov: *http://www.regulations.gov*.

Submit comments via the Federal eRulemaking portal by inputting ''GSAR Case 2008–G504'' under the heading ''Comment or Submission''. Select the link ''Send a Comment or Submission'' that corresponds with GSAR Case 2008–G504. Follow the instructions provided to complete the ''Public Comment and Submission Form''. Please include your name, company name (if any), and ''GSAR Case 2008–G504'' on your attached document.

- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite GSAR Case 2008–G504 in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Michael O. Jackson at (202) 208–4949, or by e-mail at *michaelo.jackson@gsa.gov*. For information pertaining to the status or publication schedules, contact the Regulatory Secretariat (VPR), Room 4041, GS Building, Washington, DC 20405, (202) 501–4755. Please cite GSAR Case 2008–G504.

SUPPLEMENTARY INFORMATION:

A. Background

The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to revise sections of GSAR Part 512 that provide requirements for the acquisition of commercial items.

This rule is a result of the General Services Administration Acquisition Manual (GSAM) rewrite initiative undertaken by GSA to revise the GSAM to maintain consistency with the Federal Acquisition Regulation (FAR) and to implement streamlined and innovative acquisition procedures that contractors, offerors, and GSA contracting personnel can utilize when entering into and administering contractual relationships. The GSAM incorporates the General Services Administration Acquisition Regulation (GSAR) as well as internal agency acquisition policy.

GSA will rewrite each part of the GSAR and GSAM, and as each GSAR part is rewritten, will publish it in the **Federal Register**.

This rule covers the rewrite of GSAR Part 512 and revises the text at GSAR 512.301, Solicitation provisions and contract clauses for the acquisition of commercial items. GSAR clauses 552.212–70, Preparation of Offer (Multiple Award Schedule), and 552.212–73, Evaluation—Commercial Items (Multiple Award Schedule), are proposed for deletion from GSAR Part 512 and proposed to be moved to GSAR Part 538, Federal Supply Schedule Contracting, as these GSAR clauses are a better fit in GSAR Part 538. GSAR clauses 552.212–71, Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items and 552.212–72, Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to GSA Acquisition of Commercial Items, are retained with no changes.

Discussion of Comments

Four comments covering Part 512 were received in response to the Advanced Notice of Proposed Rulemaking. A discussion of these comments is provided below:

Comment: Add a clause to the GSAM that allows for use of FAR Part 12 in relation to constructions or remodeling of real property.

Response: Office of Federal Procurement Policy Memorandum dated July 3, 2003 states ''Part 12, as currently promulgated, should rarely, if ever, be used for new construction acquisitions or non-routine alterations and repair services. In accordance with longstanding practice, agencies should apply the policies of FAR Part 36 to these acquisitions. Therefore, no additional language is being added to Part 12.

Comment: Revise the GSAR to address inconsistencies and duplications between and among GSA contract clauses and FAR Part 12 that are often included in a single contract.

Response: The clauses were reviewed and any inconsistencies were eliminated to the maximum extent possible.

Comment: Revise the GSAR to encourage contracting officers to consider a vendor's commercial practices and policies during negotiation of contract terms and conditions consistent with the contracting officer's ability to tailor clauses under FAR 12.302.

Response: Current FAR Part 12 requires contracting officers to consider a vendor's commercial practices and policies during negotiations of contract terms and conditions.

Comment: Revise the GSAR to eliminate inconsistencies and redundancies between the FAR and GSAR in the context of a Federal Supply Schedule, specifically citing Federal Supply Schedule 70.

Response: The Federal Supply Schedule clauses have been reviewed and are being published in GSAM Part 538. Inconsistencies and redundancies between the FAR and GSAR were eliminated to the maximum extent possible.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The General Services Administration does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the revisions are not considered substantive. The revisions only update and reorganize existing coverage. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. GSA will consider comments from small entities concerning the affected GSAR Parts 512 and 552 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (GSAR case 2008–G504), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies; however, these changes to the GSAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 3090–0027.

List of Subjects in 48 CFR Parts 512 and 552

Government procurement.

Dated: July 23, 2008.

Al Matera

Director, Office of Acquisition Policy, U.S. General Services Administration.

Therefore, GSA proposes to amend 48 CFR parts 512 and 552 as set forth below:

PART 512—ACQUISITION OF COMMERCIAL ITEMS

1. The authority citation for 48 CFR part 512 is revised to read as follows:

Authority: 40 U.S.C. 121(c).

2. Amend section 512.301 by revising paragraph (a) to read as follows:

512.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(a) *Solicitation provisions and clauses.* Insert these provisions or clauses in solicitations or solicitations and contracts, respectively, in accordance with the instructions provided:

(1) 552.212–71, Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items, when listed clauses apply. The clause provides for incorporation by reference of terms and conditions which are, to the maximum extent practicable, consistent with customary commercial practice. If necessary, tailor this clause.

(2) 552.212–72, Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to GSA Acquisitions of Commercial Items, when listed clauses apply. The clause provides for the incorporation by reference of terms and conditions required to implement provisions of law or executive orders that apply to commercial item acquisitions.

* * * * *

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. The authority citation for 48 CFR part 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

552.212–70 [Removed]

4. Remove section 552.212–70.

552.212–73 [Removed]

5. Remove section 552.212–73.

[FR Doc. E8–17540 Filed 7–31–08; 8:45 am]

BILLING CODE 6820–61–S

GENERAL SERVICES ADMINISTRATION

48 CFR Part 513

[GSAR Case 2007–G502; Docket 2008–0007; Sequence 16]

RIN 3090–AI67

General Services Acquisition Regulation; GSAR Case 2007–G502; Rewrite of GSAR Part 513, Simplified Acquisition Procedures

AGENCY: Office of the Chief Acquisition Officer, General Services Administration (GSA).

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) is proposing to amend the General Services Acquisition Regulation (GSAR) to revise and update the agency's implementation of the Federal Acquisition Regulation (FAR) Part 13, Simplified Acquisition Procedures.

DATES: Interested parties should submit written comments to the Regulatory Secretariat on or before September 30, 2008 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by GSAR Case 2007–G502 by any of the following methods:

- Regulations.gov: *http://www.regulations.gov*. Submit comments via the Federal eRulemaking portal by inputting ''GSAR Case 2007–G502'' under the heading ''Comment or Submission''. Select the link ''Send a Comment or Submission'' that corresponds with GSAR Case 2007–G502. Follow the instructions provided to complete the ''Public Comment and Submission Form''. Please include your name, company name (if any), and ''GSAR Case 2007–G502'' on your attached document.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW, Room 4041, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite GSAR Case 2007–G502 in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT For clarification of content, contact Ms. Meredith Murphy at (202) 208–6925. For information pertaining to the status or publication schedules, contact the Regulatory Secretariat (VPR), Room 4041, GS Building, Washington, DC 20405, (202) 501–4755. Please cite GSAR Case 2007–G502.

SUPPLEMENTARY INFORMATION:

A. Background

This is part of the GSAM Rewrite Project, initiated in 2006 to revise, update, and simplify the GSAM. An Advance Notice of Proposed Rulemaking (ANPR), with a request for comments, was published in the **Federal Register** at 71 FR 7910, February 15, 2006. No public comments were received in response to Part 513. Prior to publication of this proposed rule, the draft coverage was circulated within GSA to the Services and regions. A total of 57 comments, from within the agency, were received from 16 commenters. The proposed rule incorporates those recommendations where appropriate. The current GSAM Part 513 implements three of the FAR Part 13 subparts and the policy at 513.003. There are no clauses associated with Part 513, and no supplementary subparts. The proposed rule deletes the policy statement at 513.003 and certain GSA-specific forms that are redundant to standard or optional forms in the FAR, as well as the GSAM text associated with them.

The GSA review team noted that GSAR Part 513 material currently coded as regulatory, *i.e.*, GSAR, does not, in fact, contain regulatory material. GSAR 513.302–70, 513.303–3(a) and (b), and 513.307 are considered policy because these sections merely direct contracting officers to use certain forms in certain circumstances, and to include any geographic limitations and instructions in Blanket Purchase Agreements (BPAs). There are no clauses or solicitation provisions in these sections. Therefore, the team has recommended changing the referenced material (formerly shaded gray) to GSAM rather than GSAR. The effect is to remove all of the Part 513 GSAR material. However, this former GSAR material has been retained, with some modifications, in the GSAM, which will also be available to the public on the GSAM web site, once the revisions are made final.

The following sections explain in detail the changes that are proposed to the former GSAR, now GSAM, Part 513 coverage. This information is not being provided for comment, but rather to simply notify the reader about changes to the former GSAR, now GSAM.

513.302–70: References to electronic processing systems were updated at 513.302–70, and paragraph (f) relating to the outdated Standard Form (SF) 44 procedure was deleted. The GSA Forms 300 and 300A, Order for Supplies and Services, and Order for Supplies and Services—Continuation, respectively, are proposed for removal in favor of the preferred Optional Form (OF) 347, Order for Supplies and Services, and OF 348, Order for Supplies or Services—Continuation. These forms are outdated for a number of reasons:

- Part 553 shows GSA Forms 300 and 300A as being 14 pages in length; effectively, however, it is a two-page form (Form 300 is the front and Form 300A is the back) repeated seven times. With electronic commerce, those additional copies are no longer needed.
- The form is required to be printed and used in a pin-feed format, an outdated technology.
- The second page of the form contains outdated clauses. Also, including clauses on a GSA form does not allow for frequently required updates.
- Variations of the GSA Forms 300 and 300A are in use in at least four different software systems: NEAR, Pegasys, ITSS, and Comprison. However, none of these four systems uses the actual Form 300, and all four systems have modified the Form 300—but each has modified the form in different ways. In other words, there is not a single consistent format being used for the GSA Form 300 at GSA.

OF 347 and OF 348 are very similar to the GSA Forms 300 and 300A, without the outdated and duplicative elements of the latter. FAR Drafting Conventions establish an order of

preference as follows: Standard Forms first, Optional Forms second, and agency-specific forms third. GSA is in the process of procuring a new billing and invoicing system. This should provide the ideal opportunity to change over from the GSA forms to the Optional Forms and to make all processes consistent. However, we recognize that the change will take some time to complete, and we propose to delay the effective date for cancellation of the GSA Forms 300 and 300A six months beyond the effective date of GSAM Part 513. The delayed effective date will be accomplished as part of the GSA Order implementing the revised Part 513.

513.303–3: The GSAM addresses four key areas of Blanket Purchase Agreements (BPAs) that have presented the most procedural issues for procurement personnel. Therefore, the existing GSAM 513.303–3 is retained, but it is modified to include reference to the GSA Form 3521, Blanket Purchase Agreement. Also, an outdated reference to GSA 525.570 was deleted.

513.307: This section currently is a single line authorizing the use of the GSA Form 3521 for preparation of a blanket purchase agreement. GSA is retaining the form but moving the reference to 513.303, Blanket purchase agreements (BPAs).

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The General Services Administration does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the changes are primarily editorial in nature. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. GSA will consider comments from small entities concerning the affected GSAR Part 513 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (GSAR case 2007–G502), in correspondence.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Part 513

Government procurement.

Dated: July 24, 2008.

Al Matera,

Director, Office of Acquisition Policy.

Therefore, under the authority of 40 U.S.C. 121(c), GSA proposes to remove 48 CFR part 513.

PART 5137—[REMOVED]

[FR Doc. E8–17549 Filed 7–31–08; 8:45 am]

BILLING CODE 6820–61–S

Notices

Federal Register

Vol. 73, No. 149

Friday, August 1, 2008

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Helena National Forest, Lewis & Clark County, MT, Grazing Reauthorization for Marsh Creek and Tarhead Livestock Allotments

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Helena National Forest is going to prepare an environmental impact statement for proposed reauthorization of livestock grazing on two allotments, Marsh Creek and Tarhead, in the Marsh, Tarhead, Trout and Weino Creek drainages, tributaries to Canyon Creek and the Missouri River. The purpose and need for action is to determine whether livestock grazing will continue to be authorized on these allotments and, if so, to authorize grazing in a manner that will continue to meet or move toward direction in the Forest Plan while meeting other resource objectives.

DATES: Comments concerning the proposed action must be received by August 29, 2008. The draft EIS is expected to be available to the public in November/December of 2008 and the final EIS is expected to be available to the public in March/April of 2009.

ADDRESSES: Send written comments to Dea Nelson (Team Leader), 2880 Skyway Drive, Helena, MT 59601, (phone—406.495.3705) or for further information, call Amber Kamps (District Ranger) or Shawn Heinert (Rangeland Management Specialist) at 406.362.4265.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

Term grazing permits currently authorize cattle grazing on the Marsh Creek and Tarhead allotments which are located in the Helena National Forest. The Helena National Forest proposes to continue to authorize grazing on these allotments under a revised allotment management plan, according to direction and objectives of the Forest Plan and in compliance with applicable laws, regulations, and policies.

A two-part decision is to be made for authorizing livestock grazing. First, it will be determined whether livestock grazing should be authorized on all, part, or none of the project area. Second, if the decision is to authorize some level of livestock grazing, then what management prescriptions will be applied (including standards, guidelines, grazing management, and monitoring) to ensure that desired condition objectives are met or that movement occurs toward those objectives.

This analysis will meet the requirement described in Section 504 of Public Law 104–19 which directed the Forest Service to complete NEPA analysis on allotments. Public Law 104–19 was signed in law on July 27, 1995 following the passing of the 1995 Rescission Bill.

Proposed Action

The Helena National Forest proposes to authorize grazing of livestock on the Marsh Creek and Tarhead allotments using an adaptive management strategy that allows implementation of additional improvements, as needed to (1) protect localized areas of riparian impacts and (2) to better facilitate livestock movement between pastures. It is proposed to provide for a range of stocking options—stocking rates, timing of grazing and duration of grazing—that would be adjusted based upon monitoring. The current stocking rate (authorized for 2007 and 2008) would be adjusted up or down depending upon the results of monitoring of utilization standards (stubble height) and evaluation of stream bank disturbance and other riparian conditions over a 3–5 year period. Specific utilization standards for key forage species needed to protect soil and water quality would be specified in the allotment management plan, as required by the Forest Plan (page II/22). Cattle distribution would be accomplished by a combination of salt and water placement and herding. Grazing would continue under a 2-pasture (Marsh Creek) or 3-pasture (Tarhead) deferred rotation as long as current utilization standards continue to be met. The overall authorized season of use would remain the same (July 1 to September 30). Stocking options, including the specific timing and duration of grazing in each pasture within the authorized season of use, would be based on monitoring of utilization standards in each pasture.

Stocking rates would not exceed levels authorized in the 1961 Allotment Management Plan: 269 AUMs for Marsh Creek Allotment, 277 AUMs for Tarhead Allotment. Experience over the past 45 years indicate that these levels provide a reasonable upper limit for stocking rates for purposes of this analysis. Grazing at the current level (approximately ⅔ of the maximum level) would continue until trends in vegetative conditions (both upland and riparian) indicate the need for a downward adjustment to accelerate improvement. Or, if objectives for vegetative conditions are met, upward adjustments in stocking would be considered if monitoring indicates those conditions and trends can be maintained.

On the Tarhead Allotment, a short section of upper Tar Head Creek, immediately adjacent to private land, would be fenced to restrict livestock access to stream banks. Riparian vegetation within the enclosure would continue to be monitored to evaluate recovery. To replace this source of livestock water, one off-stream water source (seep) would be developed. Riparian conditions at key sites on Trout and Weino Creeks would be monitored. It is expected that continued implementation of deferred grazing will result in improvement in conditions at these sites. However, if monitoring suggests that improvement is inadequate, off-site water source(s) would be developed and/or adjustments made in stocking rates.

On the Marsh Creek Allotment, the livestock are currently trailed from one pasture to the other via an existing road across private land. Should this practice become unacceptable with the landowner, a ¼-mile long stock driveway would need to be constructed on National Forest System lands requiring removal of trees from approximately 2 acres. Additionally, a ¼–½ mile of drift fence would be constructed across the driveway to

confine livestock to the appropriate pasture.

Our analysis will consider implementation of these options (development of additional water sources and construction of a stock driveway), as well as the upper limits for stocking, as part of the adaptive management strategy.

Possible Alternatives

Possible alternatives, in addition to the proposed action, are No Action (current management) and No Livestock Grazing.

Responsible Official

Kevin Riordan, Forest Supervisor, 2880 Skyway Drive, Helena, MT 59601.

Nature of Decision To Be Made

The nature of the decision is two-part: 1. Whether livestock grazing should be authorized on all, part, or none of the project area. 2. If the decision is to authorize some level of livestock grazing, then what management prescriptions will be applied (including standards, guidelines, grazing management, and monitoring) to ensure that desired condition objectives are met or that movement occurs toward those objectives.

Scoping Process

- Scoping Package (mailing)—August, 2008.
- NOI—August, 2008.
- Post on Web site—August, 2008.

Preliminary Issues

Preliminary internal review, as well as public comments from 2007, indicates concerns with riparian conditions along relatively short (less than 1/4 mile), isolated stretches of streams on the Tarhead Allotment. Monitoring and follow-up action to adjust management to improve the recovery of these areas are the focus of the proposed action. Internal review has suggested the possible need in the future to provide an alternative to the current route used to trail livestock between pastures on the Marsh Creek allotment. Construction of a stock driveway is incorporated into the proposed action to address this possible future need.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. Comments are due by August 22, 2008.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: July 23, 2008.

Kevin T. Riordan,

Forest Supervisor.

[FR Doc. E8–17429 Filed 7–31–08; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

The Manti-La Sal National Forest, Sanpete Ranger District, Utah, Sunroc Gypsum Surface Mine Plan of Operation

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Sunroc Corporation has submitted a Plan of Operations (the Plan) proposing continued gypsum surface mining operations in the Chicken Creek East and Chicken Creek West mines and proposes opening another pit on it's existing adjacent claims. The location of the mine is in Juab County, Utah, approximately 2 miles east of the town of Levan in portions of Section(s) 33 and 34, T14S, R1E, and Section 4, T15S, R1E, SLB&M. In response, the Manti LaSal National Forest is preparing an Environmental Impact Statement to analyze the environmental effect of the proposed Plan and determine whether to approve the Plan as proposed or to require additional mitigation measures to protect the environment.

DATES: Comments concerning the scope of the analysis must be received by 30 days after the publication of the NOI. The draft environmental impact statement is expected November, 2008 and the final environmental impact statement is expected January, 2009.

ADDRESSES: Send written comments to Rod Player, Acting Forest Supervisor, Manti LaSal National Forest, 599 West Price River Drive, Price, Utah 84501.

For further information, mail correspondence to Tom Lloyd, Team Leader, by mail: Box 310, Ferron, Utah 84523.

FOR FURTHER INFORMATION CONTACT: To Tom Lloyd, Team Leader by mail: Box 310, Ferron, Utah, 84523. The Plan of Operation is available for public review (36 CFR 228.6) at the District Ranger's Office, 540 North Main, Ephraim, Utah 84627–1117.

Purpose and Need for Action

Sunroc Corporation has submitted a Plan of Operations for continued mining in the Chicken Creek East and Chicken Creek West mines and proposed mining in the Upper Chicken Creek West area.

The purpose of this EIS is to provide a timely evaluation of the environmental impacts of the proposed plan of operation and determine whether to approve the Plan as proposed or to require additional mitigation measures to protect the environment (in accordance with Forest Service regulations for locatable minerals).

The need for action is to allow Sunroc Corporation to exercise their rights under U.S. mining laws. Sunroc has a right to develop its claims as set forth by the General Mining Law of 1872 as amended. These laws provide that the public has a statutory right to conduct prospecting, exploration, and development activities (1872 Mining Law and 1897 Organic Act), provided they are reasonably incident (1955 Multiple Use Mining Act and case law) to mining and comply with other federal laws.

The Forest Service has the responsibility to protect surface resources. Mining regulations state that ''operations shall be conducted so as, where feasible, to minimize adverse environmental effects on Nation Forest System surface resources (36 CFR 228.8)'' provided such regulation does not endanger or materially interfere with prospecting, mining, or processing operations or reasonably incident uses (1955 Multiple Use Mining Act and case law).

Proposed Action

The proposed federal action is to approve Sunroc Corporation's Plan of Operation with mitigations needed to protect other non-mineral surface resources consistent with Forest Plan, regulations, and other applicable laws.

Possible Alternatives

1. No Action, 2. Approve the Plan as presented, 3. Approve the Plan as presented by Sunroc Corporation, with stipulations necessary to protect the non-mineral resources of the area.

Responsible Official

Rod Player, Acting Forest Supervisor, Manti LaSal National Forest, 599 West Price River Drive, Price, Utah 84501.

Nature of Decision To Be Made

The federal action being considered in this environmental analysis is the Forest Service decision to approve the proposed Plan as submitted, or to decide what additional mitigations are needed to protect other resources as provided for in 36 CFR 228.8.

Scoping Process

Scoping will include NOI to **Federal Register**, listing in the Quarterly Schedule of Proposed Actions, letters to interested and affected individuals, agencies, and organizations, and legal notices. No public meeting is planned.

Preliminary Issues

Some of the proposed mining area is in inventoried roadless area, in key winter range, and the proposed disturbance does not meet visual quality objectives of the Forest Plan.

Permits or Licenses Required

The approved Plan of Operation authorizes mining. Operations must be consistent with Forest Service Conditions of Approval, and other applicable laws and regulations.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 30-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement.

Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.

Dated: July 21, 2008.

Rod Player,

Acting Forest Supervisor.

[FR Doc. E8–17667 Filed 7–31–08; 8:45 am]

BILLING CODE 3410–11–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List products and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* August 31, 2008.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Kimberly M. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@jwod.gov.*

SUPPLEMENTARY INFORMATION:

On May 23 and June 6, 2008, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (73 FR 30046; 32287) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide

the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and service to the Government.

2. The action will result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and service are added to the Procurement List:

Products

Mop, Dust and Floor
NSN: 7920–00–616–2493—Dust Mop
NSN: 7920–00–782–3784—Floor Mop
Coverage: B-List for the broad Government requirement as specified by the General Services Administration.
NPA: New York City Industries for the Blind, Inc., Brooklyn, NY.
Contracting Activity: General Services Administration, Southwest Supply Center, Fort Worth, TX.

Filter, Notebook, Privacy
NSN: 7520–00–NIB–1943—Filter, Notebook, Privacy, 14.1''
NSN: 7520–00–NIB–1944—Filter, Notebook, Privacy, 14.1W
NSN: 7520–00–NIB–1945—Filter, Notebook, Privacy, 15.0''
NSN: 7520–00–NIB–1946—Filter, Notebook, Privacy, 15.4''
NSN: 7520–00–NIB–1947—Filter, Notebook, Privacy, 17.0''
NSN: 7520–00–NIB–1948—Filter, Notebook, Privacy, 17.0W
NSN: 7520–00–NIB–1950—Filter, Notebook, Privacy, 19.0''
NSN: 7520–00–NIB–2006—Filter, Notebook, Privacy, 19.0''W
Coverage: A-List for the total Government requirement as specified by the General Services Administration.
NSN: 7520–00–NIB–1941—Filter, Notebook, Privacy 12.1''
NSN: 7520–00–NIB–1942—Filter, Notebook, Privacy, 12.1W
NSN: 7520–00–NIB–2005—Filter, Notebook, Privacy, 13.3''W
NSN: 7520–00–NIB–2007—Filter, Notebook, Privacy, 20.1''
NSN: 7520–00–NIB–2008—Filter, Notebook, Privacy, 20.1''W
NSN: 7520–00–NIB–2009—Filter, Notebook, Privacy, 22''W
NSN: 7520–00–NIB–2010—Filter, Notebook, Privacy, 24''W
Coverage: B-List for the broad Government requirement as specified by the General Services Administration.
NPA: Wiscraft Inc.—Wisconsin Enterprises for the Blind, Milwaukee, WI.
Contracting Activity: General Services Administration, Federal Supply Services, Region 2, New York, NY.

File Folders, Colored, Recycled
NSN: 7530–00–NIB–0866—Letter-size, Assorted Colors, 1/3 cut, 100/BX
NSN: 7530–00–NIB–0867—Letter-size, Blue, 1/3 Cut, 100/BX
NSN: 7530–00–NIB–0868—Letter-size, Bright Green, 1/3 cut, 100/BX
NSN: 7530–00–NIB–0869—Letter-size, Red, 1/3 cut, 100/BX
NSN: 7530–00–NIB–0870—Letter-size, Purple, 1/3 cut, 100/BX
NSN: 7530–00–NIB–0871—Letter-size, Yellow, 1/3 cut, 100/BX
NSN: 7530–00–NIB–0872—Letter-size, Double Ply Reinforced, Assorted Colors, 1/3 cut, 100/BX
NSN: 7530–00–NIB–0873—Letter-size, Double Ply Reinforced, Blue, 1/3 cut, 100/BX
NSN: 7530–00–NIB–0874—Letter-size, Double Ply Reinforced, Bright Green, 1/3 cut, 100/BX
NSN: 7530–00–NIB–0875—Letter-size, Double Ply Reinforced, Red, 1/3 cut, 100/BX
NSN: 7530–00–NIB–0876—Letter-size, Double Ply Reinforced, Purple, 1/3 cut, 100/BX
NSN: 7530–00–NIB–0877—Letter-size, Double Ply Reinforced, Yellow, 1/3 cut, 100/BX
Coverage: A-list for the total Government requirements as specified by the General Services Administration.
NPA: L.C. Industries For The Blind, Inc., Durham, NC.
Contracting Activity: General Services Administration, Federal Supply Services, Region 2, New York, NY.

Service

Service Type/Location: Food Service Attendant, 183rd Guard Capitol Airport, Air National Guard Base, 3101 J. David Jones Parkway, Springfield, IL.
NPA: United Cerebral Palsy of the Land of Lincoln, Springfield, IL.
Contracting Activity: United States Air Force, 183rd Fighter Wing, Air National Guard, Springfield, IL.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Kimberly M. Zeich,
Director, Program Operations.

[FR Doc. E8–17684 Filed 7–31–08; 8:45 am]
BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from the Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products previously furnished by such agencies.

Comments Must Be Received On or Before: August 31, 2008.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

For Further Information or to Submit Comments Contact: Kimberly M. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following services are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Custodial Services, U.S. Department of Agriculture, Forest Service—District Office, 8181 Highway 2, Rapid River, MI.
NPA: Lakestate Industries, Escanaba, MI.
Contracting Activity: U.S. Department of Agriculture, Hiawatha National Forest, Escanaba, MI.

Service Type/Location: Custodial Services, Walter Reed Army Medical Center, Glen Haven Annex and Forest Glen Annex, (excluding Main Hospital and Armed Forces Institute of Pathology), 6900 Georgia Avenue, Washington, DC.
NPA: MVLE, Inc., Springfield, VA.
Contracting Activity: Department of the Army, National Region Contract Office, Washington, DC.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action should not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for deletion from the Procurement List.

End of Certification

The following products are proposed for deletion from the Procurement List:

Products

Pad, Scouring
NSN: 7920–01–499–1617.
NPA: Beacon Lighthouse, Inc., Wichita Falls, TX.
Contracting Activity: General Services Administration, Federal Supply Service, Fort Worth, TX.

Pad, Folio
NSN: 7510–01–484–4590.
NPA: Winston-Salem Industries for the Blind, Winston-Salem, NC.

Paper Cutter, Rotary Precision
NSN: 7520–01–483–8898.
NPA: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA.

Flashlight
NSN: 6230–01–513–3276—Flashlight, Aluminum, 3D, Blue.
NPA: Central Association for the Blind & Visually Impaired, Utica, NY.
Contracting Activity: General Services Administration, Office Supplies & Paper Products Acquisition Ctr, New York, NY.

Kimberly M. Zeich,
Director, Program Operations.

[FR Doc. E8–17683 Filed 7–31–08; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–909]

Notice of Antidumping Duty Order: Certain Steel Nails From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the ''Department'') and the International Trade Commission (''ITC''), the Department is issuing an antidumping duty order on certain steel nails from the People's Republic of China (''PRC''). On July 21, 2008, the ITC notified the Department of its affirmative determination of material injury to a U.S. industry. *See Certain Steel Nails from China*, Investigation No. 731–TA–1114 (Final), USITC Publication 4022 (July 2008).

EFFECTIVE DATES: August 1, 2008

FOR FURTHER INFORMATION CONTACT: Matthew Renkey or Alex Villanueva, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2312, or (202) 482–3208, respectively.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended (the ''Act''), on June 16, 2008, the Department published *Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977 (June 16, 2008) (''*Final Determination*'').

Scope of the Order

The merchandise covered by this proceeding includes certain steel nails having a shaft length up to 12 inches. Certain steel nails include, but are not limited to, nails made of round wire and nails that are cut. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and have a variety of finishes, heads, shanks, point types, shaft lengths and shaft diameters. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, whether by electroplating or hot-dipping one or more times), phosphate cement, and paint. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted shank styles. Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the fastener using a tool that engages with the head. Point styles include, but are not limited to, diamond, blunt, needle, chisel and no point. Finished nails may be sold in bulk, or they may be collated into strips or coils using materials such as plastic, paper, or wire. Certain steel nails subject to this proceeding are currently classified under the Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings 7317.00.55, 7317.00.65 and 7317.00.75.

Excluded from the scope of this proceeding are roofing nails of all lengths and diameter, whether collated or in bulk, and whether or not galvanized. Steel roofing nails are specifically enumerated and identified in ASTM Standard F 1667 (2005 revision) as Type I, Style 20 nails. Also excluded from the scope of this proceeding are corrugated nails. A corrugated nail is made of a small strip of corrugated steel with sharp points on one side. Also excluded from the scope of this proceeding are fasteners suitable for use in powder-actuated hand tools, not threaded and threaded, which are currently classified under HTSUS 7317.00.20 and 7317.00.30. Also excluded from the scope of this proceeding are thumb tacks, which are currently classified under HTSUS 7317.00.10.00. Also excluded from the scope of this proceeding are certain

brads and finish nails that are equal to or less than 0.0720 inches in shank diameter, round or rectangular in cross section, between 0.375 inches and 2.5 inches in length, and that are collated with adhesive or polyester film tape backed with a heat seal adhesive. Also excluded from the scope of this proceeding are fasteners having a case hardness greater than or equal to 50 HRC, a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas-actuated hand tools.

While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Ministerial Error Allegations

On June 16, 2008, ITW [1] and Xingya Group [2] filed timely allegations that the Department made certain ministerial errors in the calculation of their respective antidumping duty margins. Petitioners [3] made no ministerial error allegations but on June 23, 2008, submitted timely rebuttal comments to ITW's and Xingya Group's allegations. Ministerial errors are defined in section 735(e) of the Act as ''errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the {Secretary} considers ministerial.''

Comment 1: Improper Application of Partial Adverse Facts Available (''AFA'') for ITW's Indirect Labor

ITW contends that the Department ignored the arguments it submitted in its rebuttal brief, evidencing that ITW properly reported all indirect labor hours. ITW further contends that the Department's Issues and Decision Memorandum (''IDM'') that accompanied the *Final Determination* did not reflect an examination of the record evidence it cited in support of its argument, specifically exhibits 18A and 18B of the Department's Paslode Shanghai Verification Report.[4] ITW concludes that the Department should correct this oversight, including both the margin calculation and the incorrect statements in the IDM.

In rebuttal, Petitioners argue that the Department explicitly summarized and noted ITW's arguments and correctly rejected them in weighing the evidence and rendering its decision. Petitioners contend that ITW's allegation is both contrary to the record evidence and does not constitute a ministerial error within the meaning of 19 CFR 351.224. Petitioners conclude that the Department's determination was deliberate and reflects a decision based on the record evidence and argument.

Analysis

We disagree with ITW that we made a ministerial error in applying partial AFA to its indirect labor factor of production (''FOP''). ITW's disagreement with our application of partial AFA is methodological, rather than ministerial, in nature. We affirmatively addressed this issue, including ITW's arguments, in Comment 20F of our IDM and explained that the record supported our finding that ITW failed to account for certain indirect labor workers in its FOP data.

Comment 2: Improper Exclusion of Indian Imports of North Korean Merchandise for Three Surrogate Values

Xingya Group argues that the Department improperly excluded Indian imports of North Korean merchandise from the calculation of the surrogate values for three FOPs (collating copper-plated wire, collating stainless steel wire, and ink). Xingya Group states that it is the Department's normal policy to include data from countries such as North Korea for which it has not made a determination as to their non-market economy (''NME'') status. Xingya Group cites to the final determination of the PRC Furniture investigation, where the Department included Indian imports of plywood from Myanmar, even though respondents alleged it was a NME. *See Final Determination of Sales at Less than Fair Value: Wooden Bedroom Furniture from the People's Republic of China*, 69 FR 67313 (November 17, 2004), and accompanying Issues and Decision Memorandum at Comment 70 (''*PRC Furniture*'').

In rebuttal, Petitioners contend that the Department correctly excluded the Indian imports of North Korean merchandise. Petitioners note that in *PRC Furniture*, the Department's ultimate decision did not require addressing Myanmar's status as an NME country. Petitioners further note that the Department has more recent, direct precedent with respect to North Korea, citing to *Helical Spring Lock Washers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 73 FR 4175 (January 24, 2008), and accompanying Issues and Decision Memorandum at Comment 3 (''*Helical Spring Lock Washers*''), ''Consistent with our determination in fish fillets from Vietnam, we have excluded Indian imports from North Korea from our stainless SWR surrogate value calculation.'' Additionally, Petitioners note that even though there has never been a U.S. antidumping duty case against North Korean imports requiring NME analysis, the Department may determine to exclude a country's trade data as being non-market without a case history. *See http://ia/ita.doc.gov/admanual/admanual_ch08.pdf*.

Analysis

The Department's decision to exclude Indian imports of North Korean merchandise was also methodological rather than clerical in nature. As the two alleged errors discussed above do not meet the definition of a ministerial error under 19 CFR 351.224(f), we are not issuing an amended final determination.

Antidumping Duty Order

On July 21, 2008, in accordance with section 735(d) of the Act, the ITC notified the Department of its final determination, pursuant to section 735(b)(1)(A)(i) of the Act, that an industry in the United States is materially injured by reason of less-than-fair-value imports of subject merchandise from the PRC. Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (''CBP'') to assess, upon further instruction by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise for all relevant entries of certain steel nails from the PRC. These antidumping duties will be assessed on all unliquidated entries of certain steel nails from the PRC entered, or withdrawn from the warehouse, for consumption on or after January 23, 2008, the date on which the Department

[1] Illinois Tool Works Inc., Paslode Division (''ITW Paslode'') and Paslode Fasteners (Shanghai) Co., Ltd. (''Paslode Shanghai''), (collectively, ''ITW'').

[2] Suzhou Xingya Nail Co., Ltd, Senco-Xingya Metal Products (Taicang) Co., Ltd., Yunfa International Resources Inc., Senco Products, Inc. (''Senco''), and Omnifast Inc. (''Omnifast'') (collectively ''Xingya Group'').

[3] Petitioners are: Mid Continent Nail Corporation; Davis Wire Corporation; Gerdau Ameristeel Corporation (Atlas Steel & Wire Division); Maze Nails (Division of W.H. Maze Company); Treasure Coast Fasteners, Inc.; and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union.

[4] *See* Memorandum to the File through Alex Villanueva, Program Manager, Office 9, from Nicole Bankhead, Senior Case Analyst: Verification of the Sales and Factors Response of Paslode Fasteners (Shanghai) Co., Ltd. in the Antidumping Investigation of Certain Steel Nails from the People's Republic of China, dated April 15, 2008.

published its preliminary determination. *See Certain Steel Nails from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances and Postponement of Final Determination*, 73 FR 3928 (January 23, 2008) (''*Preliminary Determination*'').

The ITC also notified the Department that it made a negative critical circumstances determination in this investigation. Therefore, we will instruct CBP to lift suspension, release any bond or other security, and refund any cash deposit made to secure the payment of antidumping duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after October 25, 2007, but before January 23, 2008 (*i.e.*, the 90 days prior to the date of publication of the *Preliminary Determination*).

Effective on the date of publication of the ITC's final affirmative injury determination, CBP will require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as listed below. *See* section 735(c)(3) of the Act. The ''PRC-wide'' rate applies to all exporters of subject merchandise not specifically listed. The weighted-average dumping margins are as follows:

CERTAIN STEEL NAILS FROM THE PRC WEIGHTED-AVERAGE DUMPING MARGINS

Exporter	Producer	Weighted-average margin (in percent)
Paslode Fasteners (Shanghai) Co., Ltd	Paslode Fasteners (Shanghai) Co., Ltd	0.00
Xingya Group:		
Suzhou Xingya Nail Co., Ltd	Suzhou Xingya Nail Co., Ltd.	21.24
Senco-Xingya Metal Products (Taicang) Co., Ltd.	Senco-xingya Metal Products (Taicang) Co., Ltd	
Hong Kong Yu Xi Co., Ltd	Wuxi Chengye Metal Products Co., Ltd.	
Jisco Corporation	Qingdao Jisco Co., Ltd	21.24
Koram Panagene Co., Ltd	Qingdao Koram Steel Co., Ltd	21.24
Handuk Industrial Co., Ltd	Rizhao Handuk Fasteners Co., Ltd	21.24
Handuk Industrial Co., Ltd	Rizhao Changxing Nail-Making Co., Ltd	21.24
Kyung Dong Corp	Rizhao Qingdong Electric Appliance Co., Ltd	21.24
Xi'an Metals & Minerals Import and Export Co., Ltd	Huanghua Jinhai Hardware Products Co., Ltd	21.24
Hebei Cangzhou New Century Foreign Trade Co., Ltd	Huanghua Jinhai Hardware Products Co., Ltd	21.24
Hebei Cangzhou New Century Foreign Trade Co., Ltd	Beijing Hongsheng Metal Products Co., Ltd	21.24
Hebei Cangzhou New Century Foreign Trade Co., Ltd	Tianjin Dagang Huasheng Nailery Co., Ltd	21.24
Chongqing Hybest Tools Group Co., Ltd	Chongqing Hybest Nailery Co., Ltd	21.24
China Silk Trading & Logistics Co., Ltd	Maanshan Longer Nail Product Co., Ltd	21.24
China Silk Trading & Logistics Co., Ltd	Wuxi Qiangye Metalwork Production Co., Ltd	21.24
Beijing Daruixing Global Trading Co., Ltd	Beijing Tri-Metal Co., Ltd	21.24
Beijing Daruixing Global Trading Co., Ltd	Beijing Daruixing Nail Products Co., Ltd	21.24
Beijing Daruixing Global Trading Co., Ltd	Tianjin Kunxin Hardware Co., Ltd	21.24
Beijing Daruixing Global Trading Co., Ltd	Tianjin Hewang Nail Making Factory	21.24
Huanghua Jinhai Hardware Products Co., Ltd	Huanghua Jinhai Hardware Products Co., Ltd	21.24
Beijing Daruixing Nail Products Co., Ltd	Beijing Daruixing Nail Products Co., Ltd	21.24
Beijing Daruixing Nail Products Co., Ltd	Beijing Tri-Metal Co., Ltd	21.24
Beijing Tri-Metal Co., Ltd	Beijing Tri-Metal Co., Ltd	21.24
Beijing Tri-Metal Co., Ltd	Beijing Daruixing Nail Products Co., Ltd	21.24
Cana (Tianjin) Hardware Ind., Co., Ltd	Cana (Tianjin) Hardware Ind., Co., Ltd	21.24
China Staple Enterprise (Tianjin) Co., Ltd	China Staple Enterprise (Tianjin) Co., Ltd	21.24
Hengshui Mingyao Hardware & Mesh Products Co., Ltd	Hengshui Mingyao Hardware & Mesh Products Co., Ltd	21.24
Nanjing Dayu Pneumatic Gun Nails Co., Ltd	Nanjing Dayu Pneumatic Gun Nails Co., Ltd	21.24
Qidong Liang Chyuan Metal Industry Co., Ltd	Qidong Liang Chyuan Metal Industry Co., Ltd	21.24
Romp (Tianjin) Hardware Co., Ltd	Romp (Tianjin) Hardware Co., Ltd	21.24
Shandong Dinglong Import & Export Co., Ltd	Qingyun Hongyi Hardware Factory	21.24
Tianjin Jinchi Metal Products Co., Ltd	Tianjin Jinchi Metal Products Co., Ltd	21.24
Tianjin Jurun Metal Products Co., Ltd	Tianjin Jurun Metal Products Co., Ltd	21.24
Zhejiang Gem-Chun Hardware Accessory Co., Ltd	Zhejiang Gem-Chun Hardware Accessory Co., Ltd	21.24
Huanghua Xionghua Hardware Products Co., Ltd	Huanghua Xionghua Hardware Products Co., Ltd	21.24
Zhaoqing Harvest Nails Co., Ltd	Zhaoqing Harvest Nails Co., Ltd	21.24
SDC International Australia Pty., Ltd	S-mart Tianjin Technology Development Co., Ltd	21.24
SDC International Australia Pty., Ltd	Tianjin Jishili Hardware Co., Ltd	21.24
SDC International Australia Pty., Ltd	Tianjin Baisheng Metal Product Co., Ltd	21.24
SDC International Australia Pty., Ltd	Tianjin Foreign Trade (Group) Textile & Garment Co., Ltd	21.24
SDC International Australia Pty., Ltd	Dagang Zhitong Metal Products Co., Ltd	21.24
Tianjin Universal Machinery Imp & Exp Corporation	Huanghua Shenghua Hardware Manufactory Factory	21.24
Tianjin Universal Machinery Imp & Exp Corporation	Tianjin Dagang Dongfu Metallic Products Co., Ltd	21.24
Tianjin Universal Machinery Imp & Exp Corporation	Tianjin Dagang Jingang Nail Factory	21.24
Tianjin Universal Machinery Imp & Exp Corporation	Tianjin Dagang Linda Metallic Products Co., Ltd	21.24
Tianjin Universal Machinery Imp & Exp Corporation	Tianjin Dagang Yate Nail Co., Ltd	21.24
Tianjin Universal Machinery Imp & Exp Corporation	Tianjin Jieli Hengyuan Metallic Products Co., Ltd	21.24
Tianjin Universal Machinery Imp & Exp Corporation	Tianjin Shishun Metallic Products Co., Ltd	21.24
Tianjin Universal Machinery Imp & Exp Corporation	Tianjin Yihao Metallic Products Co., Ltd	21.24
Tianjin Universal Machinery Imp & Exp Corporation	Tianjin Yongcang Metallic Products Co., Ltd	21.24
Certified Products International Inc	Huanghua Jinhai Hardware Products Co., Ltd	21.24
Certified Products International Inc	Shanxi Yuci Broad Wire Products Co., Ltd	21.24

CERTAIN STEEL NAILS FROM THE PRC WEIGHTED-AVERAGE DUMPING MARGINS—Continued

Exporter	Producer	Weighted-average margin (in percent)
Certified Products International Inc	Hengshui Mingyao Hardware & Mesh Products Co., Ltd	21.24
Certified Products International Inc	Tianjin Zhonglian Metals Ware Co., Ltd	21.24
Certified Products International Inc	Beijing Daruixing Nail Products Co., Ltd	21.24
Certified Products International Inc	Huanghua Xionghua Hardware Products Co., Ltd	21.24
Certified Products International Inc	Tianjin Port Free Trade Zone Xiangtong Intnl. Industry & Trade Corp.	21.24
Certified Products International Inc	Shandong Dinglong Import & Export Co., Ltd	21.24
Certified Products International Inc	Wuhu Shijie Hardware Co., Ltd	21.24
Certified Products International Inc	Romp (Tianjin) Hardware Co., Ltd	21.24
Certified Products International Inc	Tianjin Jurun Metal Products Co., Ltd	21.24
Certified Products International Inc	Yitian (Nanjing) Hardware Co., Ltd	21.24
Certified Products International Inc	Nanjing Da Yu Pneumatic Gun Nails Co., Ltd	21.24
Certified Products International Inc	Wintime Import & Export Corporation Limited of Zhongshan	21.24
Certified Products International Inc	Tianjin Chentai International Trading Co., Ltd	21.24
Certified Products International Inc	Tianjin Longxing (Group) Huanyu Imp. & Exp. Co., Ltd	21.24
Certified Products International Inc	Zhejiang Gem-Chun Hardware Accessory Co., Ltd	21.24
Certified Products International Inc	Shanxi Pioneer Hardware Industrial Co., Ltd	21.24
Certified Products International Inc	Wuhu Xin Lan De Industrial Co., Ltd	21.24
Certified Products International Inc	Tianjin Zhitong Metal Products Co., Ltd	21.24
Certified Products International Inc	Suntec Industries Co., Ltd	21.24
Certified Products International Inc	China Staple Enterprise (Tianjin) Co., Ltd	21.24
Certified Products International Inc	Tianjin Jinghai County Hongli Industry & Business Co., Ltd	21.24
Certified Products International Inc	Hebei Super Star Pneumatic Nails Co., Ltd	21.24
Certified Products International Inc	Shanghai Chengkai Hardware Products Co., Ltd	21.24
Certified Products International Inc	Tianjin Jinchi Metal Products Co., Ltd	21.24
Certified Products International Inc	Shaoxing Chengye Metal Producting Co., Ltd	21.24
Certified Products International Inc	Tianjin Shenyuan Steel Producting Group Co., Ltd	21.24
Certified Products International Inc	Shanghai Jade Shuttle Hardware Tools Co., Ltd	21.24
Dezhou Hualude Hardware Products Co., Ltd	Tianjin Bosai Hardware Tools Co., Ltd	21.24
Dezhou Hualude Hardware Products Co., Ltd	Beijing Yonghongsheng Metal Products Co., Ltd	21.24
Dezhou Hualude Hardware Products Co., Ltd	Tianjin City Jinchi Metal Products Co., Ltd	21.24
Dezhou Hualude Hardware Products Co., Ltd	Huanghua Huarong Hardware Products Co., Ltd	21.24
Dezhou Hualude Hardware Product Co., Ltd	Huanghua Yufutai Hardware Products Co., Ltd	21.24
Dezhou Hualude Hardware Products Co., Ltd	Qingyuan County Hongyi Hardware Products Factory	21.24
Dezhou Hualude Hardware Products Co., Ltd	Tianjin Zhitong Metal Products Co., Ltd	21.24
Dezhou Hualude Hardware Products Co., Ltd	Tianjin Baisheng Metal Products Co., Ltd	21.24
Dezhou Hualude Hardware Products Co., Ltd	Tianjin Dagang Hewang Nails Factory	21.24
Shanxi Tianli Industries Co	Dingzhou Ruili Nail Production Co., Ltd	21.24
Shanxi Tianli Industries Co	Haixing Hongda Hardware Production Co., Ltd	21.24
Shanxi Tianli Industries Co	Huanghua Xinda Nail Production Co., Ltd	21.24
Shanxi Tianli Industries Co	Tianjin Huachang Metal Products Co., Ltd	21.24
Shanxi Tianli Industries Co	Tianjin Huapeng Metal Company	21.24
Shanxi Tianli Industries Co	Tianjin Huasheng Nails Production Co., Ltd	21.24
Shanxi Tianli Industries Co	Tianjin Jin Gang Metal Products Co., Ltd	21.24
Shanxi Tianli Industries Co	Tianjin Kunxin Metal Products Co., Ltd	21.24
Shanxi Tianli Industries Co	Tianjin Linda Metal Company	21.24
Shanxi Tianli Industries Co	Tianjin Xinyuansheng Metal Products Co., Ltd	21.24
Shanxi Tianli Industries Co	Tianjin Yongyi Standard Parts Production Co., Ltd	21.24
Shanxi Tianli Industries Co	Wuqiao Huifeng Hardware Production Co., Ltd	21.24
Suntec Industries Co., Ltd	Wuqiao County Huifeng Hardware Products Factory	21.24
Suntec Industries Co., Ltd	Wuqiao County Xinchuang Hardware Products Factory	21.24
Suntec Industries Co., Ltd	Huanghua Jinhai Hardware Products Co., Ltd	21.24
Suntec Industries Co., Ltd	Haixing Linhai Hardware Products Factory	21.24
Suntec Industries Co., Ltd	Tianjin Baisheng Metal Products Co., Ltd	21.24
Suntec Industries Co., Ltd	Tianjin City Jinchi Metal Products Co., Ltd	21.24
Suntec Industries Co., Ltd	Tianjin City Dagang Area Jinding Metal Products Factory	21.24
Suntec Industries Co., Ltd	Tianjin Jishili Hardware Products Co., Ltd	21.24
Suntec Industries Co., Ltd	Tianjin Jietong Hardware Products Co., Ltd	21.24
Suntec Industries Co., Ltd	Tianjin Ruiji Metal Products Co., Ltd	21.24
Suntec Industries Co., Ltd	Tianjin Yongxu Metal Products Co., Ltd	21.24
Suntec Industries Co., Ltd	Wuxi Baolin Nail-Making Machinery Co., Ltd	21.24
Suntec Industries Co., Ltd	Suzhou Xingya Nail Co., Ltd	21.24
Sinochem Tianjin Imp & Exp Shenzhen Corp	Tianjin JLHY Metal Products Co., Ltd	21.24
Qingdao D&L Group Ltd	Tianjin City Daman Port Area Jinding Metal Products Factory	21.24
Qingdao D&L Group Ltd	Tianjin Yongxu Metal Products Co., Ltd	21.24
Qingdao D&L Group Ltd	Huanghua Jinhai Metal Products Co., Ltd	21.24
Qingdao D&L Group Ltd	Dong'e Fuqiang Metal Products Co., Ltd	21.24
Tianjin Xiantong Material & Trade Co., Ltd	Tianjin Xiantong Fucheng Gun Nail Manufacture Co., Ltd	21.24
Zhongshan Junlong Nail Manufactures Co., Ltd	Zhongshan Junlong Nail Manufactures Co., Ltd	21.24

CERTAIN STEEL NAILS FROM THE PRC WEIGHTED-AVERAGE DUMPING MARGINS—Continued

Exporter	Producer	Weighted-average margin (in percent)
Shandong Minmetals Co., Ltd	Shouguang Meiqing Nail Industry Co., Ltd	21.24
Shouguang Meiqing Nail Industry Co., Ltd	Shouguang Meiqing Nail Industry Co., Ltd	21.24
S-mart (Tianjin) Technology Development Co., Ltd	Tianjin Jishili Hardware Co., Ltd	21.24
S-mart (Tianjin) Technology Development Co., Ltd	Tianjin Baisheng Metal Product Co., Ltd	21.24
S-mart (Tianjin) Technology Development Co., Ltd	Tianjin Dagang Hewang Nail Factory	21.24
S-mart (Tianjin) Technology Development Co., Ltd	Tianjin Shishun Metal Product Co., Ltd	21.24
S-mart (Tianjin) Technology Development Co., Ltd	Tianjin Xinyuansheng Metal Product Co., Ltd	21.24
S-mart (Tianjin) Technology Development Co., Ltd	Tianjin Yongchang Metal Product Co., Ltd	21.24
Tianjin Lianda Group Co., Ltd	Tianjin Dagang Hewang Nails Manufacture Plant	21.24
Tianjin Lianda Group Co., Ltd	Tianjin Dagang Jingang Nails Manufacture Plant	21.24
Tianjin Lianda Group Co., Ltd	Tianjin Dagang Longhua Metal Products Plant	21.24
Tianjin Lianda Group Co., Ltd	Tianjin Dagang Shenda Metal Products Co., Ltd	21.24
Tianjin Lianda Group Co., Ltd	Tianjin Jietong Metal Products Co., Ltd	21.24
Tianjin Lianda Group Co., Ltd	Tianjin Qichuan Metal Products Co., Ltd	21.24
Tianjin Lianda Group Co., Ltd	Tianjin Yongxu Metal Products Co., Ltd	21.24
Tianjin Lianda Group Co., Ltd	Zhangjiagang Longxiang Packing Materials Co., Ltd	21.24
Union Enterprise (Kunshan) Co., Ltd	Union Enterprise (Kunshan) Co., Ltd	21.24
Beijing Hong Sheng Metal Products Co., Ltd	Beijing Hong Sheng Metal Products Co., Ltd	21.24
PT Enterprise Inc	Shanxi Hairui Trade Co., Ltd	21.24
PT Enterprise Inc	Shanxi Pioneer Hardware Industrial Co., Ltd	21.24
PT Enterprise Inc	Shanxi Yuci Broad Wire Products Co., Ltd	21.24
Shanxi Hairui Trade Co., Ltd	Shanxi Pioneer Hardware Industrial Co., Ltd	21.24
Shanxi Hairui Trade Co., Ltd	Shanxi Yuci Broad Wire Products Co., Ltd	21.24
Shanxi Pioneer Hardware Industrial Co., Ltd	Shanxi Pioneer Hardware Industrial Co., Ltd	21.24
Shanxi Yuci Broad Wire Products Co., Ltd	Shanxi Yuci Broad Wire Products Co., Ltd	21.24
Yitian Nanjing Hardware Co., Ltd	Yitian Nanjing Hardware Co., Ltd	21.24
Chiieh Yung Metal Ind. Corp	Cym (Nanjing) Nail Manufacture Co., Ltd	21.24
Shanghai Seti Enterprise International Co., Ltd	Suzhou Yaotian Metal Products Co., Ltd	21.24
Shanghai Curvet Hardware Products Co., Ltd	Shanghai Curvet Hardware Products Co., Ltd	21.24
Shanghai Curvet Hardware Product Co., Ltd	Shanghai Tengyu Hardware Tools Co., Ltd	21.24
Shanghai Tengyu Hardware Tools Co., Ltd	Shanghai Tengyu Hardware Tools Co., Ltd	21.24
Shanghai Tengyu Hardware Tools Co., Ltd	Shanghai Curvet Hardware Products Co., Ltd	21.24
Xuzhou CIP International Group Co., Ltd	Xuzhou CIP International Group Co., Ltd	21.24
Xuzhou CIP International Group Co., Ltd	Qingdao International Fastening Systems Inc	21.24
Wuhu Shijie Hardware Co., Ltd	Wuhu Shijie Hardware Co., Ltd	21.24
Wuhu Xin Lan De Industrial Co., Ltd	Wuhu Xin Lan De Industrial Co., Ltd	21.24
Tianjin Zhonglian Metals Ware Co., Ltd	Tianjin Zhonglian Metals Ware Co., Ltd	21.24
Jining Huarong Hardware Products Co., Ltd	Jining Huarong Hardware Products Co., Ltd	21.24
Mingguang Abundant Hardware Products Co., Ltd	Mingguang Abundant Hardware Products Co., Ltd	21.24
Shandong Oriental Cherry Hardware Group Co., Ltd	Shandong Oriental Cherry Hardware Group Co., Ltd	21.24
Shandong Oriental Cherry Hardware Import and Export Co., Ltd.	Shandong Oriental Cherry Hardware Import and Export Co., Ltd.	21.24
Shanghai Chengkai Hardware Product. Co., Ltd	Shanghai Chengkai Hardware Product. Co., Ltd	21.24
Shanghai Jade Shuttle Hardware Tools Co., Ltd	Shanghai Jade Shuttle Hardware Tools Co., Ltd	21.24
Shanghai Yueda Nails Industry Co., Ltd	Shanghai Yueda Nails Industry Co., Ltd	21.24
Besco Machinery Industry (Zhejiang) Co., Ltd	Besco Machinery Industry (Zhejiang) Co., Ltd	21.24
The Stanley Works (Langfang) Fastening Systems Co., Ltd	The Stanley Works (Langfang) Fastening Systems Co., Ltd	21.24
Guangdong Foreign Trade Import & Export Corporation	Shanghai Nanhui Jinjun Hardware Factory	21.24
Tianjin Jinghai County Hongli Industry and Business Co., Ltd	Tianjin Jinghai County Hongli Industry and Business Co., Ltd	21.24
PRC-Wide Rate		118.04

This notice constitutes the antidumping duty order with respect to certain steel nails from the PRC pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room 1117 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 351.211.

Dated: July 28, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–17714 Filed 7–31–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Upcoming Sunset Reviews.

SUPPLEMENTARY INFORMATION:

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended, the Department of Commerce (''the Department'') and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for September 2008

The following Sunset Reviews are scheduled for initiation in September 2008 and will appear in that month's Notice of Initiation of Five-year Sunset Reviews.

Antidumping Duty Proceedings	Department Contact
Barium Carbonate from the PRC (A–570–880)	Juanita Chen(202) 482–1904
Countervailing Duty Proceedings.	
No Sunset Review of countervailing duty proceedings are scheduled for initiation in September 2008..	
Suspended Investigations.	
No Sunset Review of suspended investigations are scheduled for initiation in September 2008..	

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3--Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998). The Notice of Initiation of Five-year (''Sunset'') Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: July 24, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–17717 Filed 7–31–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4697.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with section 351.213 of the Department of Commerce (the Department) regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the POR. We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within five days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. The Department invites comments regarding the CBP data and respondent selection within 10 calendar days of publication of the initiation **Federal Register** notice.

Opportunity to Request a Review: Not later than the last day of August 2008,[1] interested parties may request an administrative review of the following orders, findings, or suspended investigations, with anniversary dates in August for the following periods:

	Period
Antidumping Duty Proceeding	
Germany:	
Corrosion-Resistant Carbon Steel Flat Products, A–428–815	8/1/07–7/31/08
Seamless Line and Pressure Pipe, A–428–820	8/1/07–7/31/08

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

	Period
Italy: Granular Polytetrafluoroethylene Resin, A–475–703	8/1/07–7/31/08
Japan:	
Brass Sheet & Strip, A–588–704	8/1/07–7/31/08
Granular Polytetrafluoroethylene Resin, A–588–707	8/1/07–7/31/08
Tin Mill Products, A–588–854	8/1/07–7/31/08
Malaysia: Polyethylene Retail Carrier Bags, A–557–813	8/1/07–7/31/08
Mexico: Gray Portland Cement and Cement Clinker, A–201–802	8/1/07–7/31/08
Republic of Korea: Corrosion-Resistant Carbon Steel Flat Products, A–580–816	8/1/07–7/31/08
Romania: Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Under 4½ Inches), A–485–805	8/1/07–7/31/08
Thailand:	
Canned Pineapple Fruit[2], A–549–813	7/1/07–10/31/07
Polyethylene Retail Carrier Bags, A–549–821	8/1/07–7/31/08
The People's Republic of China:	
Floor Standing Metal-Top Ironing Tables and Parts Thereof, A–570–888	8/1/07–7/31/08
Petroleum Wax Candles, A–570–504	8/1/07–7/31/08
Polyethylene Retail Carrier Bags, A–570–886	8/1/07–7/31/08
Sulfanilic Acid, A–570–815	8/1/07–7/31/08
Tetrahydrofurfuryl Alcohol, A–570–887	8/1/07–7/31/08
Vietnam: Frozen Fish Fillets, A–552–801	8/1/07–7/31/08
Countervailing Duty Proceedings	
Republic of Korea:	
Corrosion-Resistant Carbon Steel Plate, C–580–818	1/1/07–12/31/07
Dynamic Random Access Memory Semiconductors, C–580–851	1/1/07–12/31/07
Stainless Steel Sheet and Strip in Coils, C–580–835	1/1/07–12/31/07
Suspension Agreements	
None.	

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producer(s) or exporter(s) covered by an antidumping finding, an antidumping or countervailing duty order, or a suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review the particular producer(s) or exporter(s).[3] If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Please note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. See also the Import Administration Web site at *http://ia.ita.doc.gov.*

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Operations, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of August 2008. If the Department does not receive, by the last day of August 2008, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: July 28, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–17713 Filed 7–31–08; 8:45 am]

BILLING CODE 3510–DS–P

[2] This case was inadvertently omitted from the opportunity notice that published on July 11, 2008 (73 FR 39948).

[3] If the review request involves a non-market economy country and the parties subject to the review request do not qualify for separate rates, all other exporters of subject merchandise from the non-market economy country who do not have a separate rate will be covered by the review as part of the single entity of which the named firms are a part.

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Public Law 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before August 21, 2008. Address written comments to Statutory Import Programs Staff, Room 2104, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. at the U.S. Department of Commerce in Room 2104.

Docket Number: 08–022. Applicant: National Renewable Energy Laboratory, 1617 Cole Blvd., Golden, CO 80401. Instrument: Electron Microscope, Model Quanta 600 FEG. Manufacturer: FEI Company, Czech Republic. Intended Use: The instrument is intended to be used to study the microstructure and composition of material used in photovoltaic (solar cell) applications (mostly semiconductor materials). It will also be used to characterize a variety of nano-structured materials such as quantum dots and carbon nanotubes. Application accepted by Commissioner of Customs: May 8, 2008.

Docket Number: 08–025. Applicant: Oklahoma State University, 203 Whitehurst, Stillwater, OK 74078–3011. Instrument: Electron Microscope, Model Quanta 600 FEG. Manufacturer: FEI Company, Czech Republic. Intended Use: This instrument will be used to study the basic properties of various types of nanomaterials. Specifically, the instrument is intended to be used to investigate microbial interactions with geologic media, including the role of microbial nanowires in geoelectrical properties of biostimulated sediments. Application accepted by Commissioner of Customs: May 9, 2008.

Docket Number: 08–028. Applicant: National Renewable Energy Laboratory, 1617 Cole Blvd., Golden, CO 80401. Instrument: Electron Microscope, Model NOVA 630 NanoSEM. Manufacturer: FEI Company, Czech Republic. Intended Use: The instrument is intended to be used to study the microstructure and composition of material used in photovoltaic (solar cell) applications, mostly semiconductor materials. It will also be used to characterize a variety of nano-structured materials such as quantum dots and carbon nanotubes. Application accepted by Commissioner of Customs: June 12, 2008.

Docket Number: 08–031. Applicant: University of Rochester Medical Center, 575 Elmwood Avenue, Box 626, Rochester, NY 14642. Instrument: Electron Microscope, Hitachi H–7650. Manufacturer: Hitachi High-Technologies Corp., Japan. Intended Use: The instrument is intended to be used to perform nanotoxicology experiments on biological tissues and cells. Specifically, the instrument will be used to find and confirm the presence of nanoparticle elements in biological tissue. Application accepted by Commissioner of Customs: June 19, 2008.

Docket Number: 08–035. Applicant: Washington State University, French Administration Building, 220, P.O. Box 641020, Pullman, Washington 99164–1020. Instrument: Electron Microscope, Model FEI Quanta 200. Manufacturer: FEI Company, Czech Republic. Intended Use: The instrument is intended to be used for several purposes, including the following: Researching the cell biology of certain plant tissue (e.g., the phloem) and studying plant systematics and evolution, researching particle and microbial material surface interactions, and studying the physical chemistry of polymers and composites. Application accepted by Commissioner of Customs: July 3, 2008.

Docket Number: 08–037. Applicant: Duke University, 2351 Erwin Rd., Durham, NC 27710. Instrument: Electron Microscope, Model JEM–1400. Manufacturer: JEOL, Ltd., Japan. Intended Use: The instrument is intended to be used for ultra structural analysis and immunolocalization of proteins. The experiment aims at defining the ultra structures of normal and diseased tissues of the visual system and at the localization of specific proteins important for function within the tissues, in an effort to preserve and restore sight. Application accepted by Commissioner of Customs: July 18, 2008.

Dated: July 29, 2008.

Faye Robinson,

Director, Statutory Import Programs Staff.

[FR Doc. E8–17702 Filed 7–31–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-year (''Sunset'') Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating a five-year review (''Sunset Review'') of the antidumping and countervailing duty orders listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of *Institution of Five-year Review* which covers the same orders.

EFFECTIVE DATE: August 1, 2008.

FOR FURTHER INFORMATION CONTACT: The Department official identified in the Initiation of Review section below at AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Ave., NW, Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3 - *Policies Regarding the Conduct of Five-year (≥Sunset'') Reviews of Antidumping and Countervailing Duty Orders: Policy Bulletin*, 63 FR 18871 (April 16, 1998).

Initiation of Review

In accordance with 19 CFR 351.218(c), we are initiating the Sunset Review of the following antidumping and countervailing duty orders:

DOC Case No.	ITC Case No.	Country	Product	Department Contact
A–570–849	731–TA–753 (Second Review)	PRC	Cut–to-Length Carbon Steel	Demitrios Kalogeropoulos (202) 482–2623
A–821–808	731–TA–754 (Second Review) (Suspended)	Russia	Cut–to-Length Carbon Steel	Sally Gannon (202) 482–0162
A–823–808	731–TA–756	Ukraine	Cut–to-Length Carbon Steel (Second Review) (Suspended)	Judith Rudman (202) 482–0192

Filing Information

As a courtesy, we are making information related to Sunset proceedings, including copies of the pertinent statute and Department's regulations, the Department schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's sunset Internet Web site at the following address: ''http://ia.ita.doc.gov/sunset/.'' All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303.

Pursuant to 19 CFR 351.103 (c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required from Interested Parties

Domestic interested parties defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b)) wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review. *See* 19 CFR 351.218(d)(1)(iii).

If we receive an order–specific notice of intent to participate from a domestic interested party, the Department's regulations provide that all parties wishing to participate in the Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order–specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements.[1] Please consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews. Please consult the Department's regulations at 19 CFR Part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218 (c).

Dated: July 24, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–17709 Filed 7–31–08; 8:45 am]

BILLING CODE 3510–DS–S

[1] In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests to extend that five-day deadline based upon a showing of good cause.

DEPARTMENT OF COMMERCE

International Trade Administration

A–533–809

Certain Forged Stainless Steel Flanges from India; Preliminary Intent to Rescind Administrative Review and Rescission in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain forged stainless steel flanges (stainless steel flanges) from India manufactured by Pradeep Metals Limited (Pradeep), Echjay Forgings Pvt., Ltd. (Echjay) and Hotmetal Forge (India) Pvt, Ltd. (Hotmetal). The period of review (POR) is February 1, 2007, through January 31, 2008. We preliminarily determine that Pradeep had no *bona fide* U.S. sales during the period of review (POR), and therefore, we intend to rescind the review. We are also rescinding the review with respect to Echjay and Hotmetal because they both withdrew their requests for the review, and no other party requested a review of these companies.

We invite interested parties to comment on this preliminary intent to rescind with respect to Pradeep. Parties who submit argument in these proceedings are requested to submit with the argument: (1) a statement of the issues; and (2) a brief summary of the argument.

EFFECTIVE DATE: August 1, 2008.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2924 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 9, 1994, the Department published the antidumping duty order

on stainless steel flanges from India. *See Amended Final Determination and Antidumping Duty Order; Certain Forged Stainless Steel Flanges from India*, 59 FR 5994 (February 9, 1994) (*Amended Final Determination*). On February 15, 2008, we received a request for an administrative review from Echjay for the period February 1, 2007 through January 31, 2008. On February 25, 2008, and February 29, 2008, we received requests from Pradeep and Hotmetal, respectively, for administrative reviews for the same period. On March 31, 2008, we initiated the administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part, and Deferral of Administrative Review*, 73 FR 16837 (March 31, 2008).

On April 2, 2008, the Department issued its questionnaire to Pradeep. Pradeep submitted its section A response on April 29, 2008, and its section B and C responses on May 8, 2008.

On April 25, 2008, Echjay withdrew its request for administrative review. On June 5, 2008, Hotmetal withdrew its request for administrative review.

Scope of the order

The products covered by this order are certain forged stainless steel flanges, both finished and not finished, generally manufactured to specification ASTM A–182, and made in alloys such as 304, 304L, 316, and 316L. The scope includes five general types of flanges. They are weld–neck, used for butt–weld line connection; threaded, used for threaded line connections; slip–on and lap joint, used with stub–ends/butt–weld line connections; socket weld, used to fit pipe into a machined recession; and blind, used to seal off a line. The sizes of the flanges within the scope range generally from one to six inches; however, all sizes of the above–described merchandise are included in the scope. Specifically excluded from the scope of this order are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A–351. The flanges subject to this order are currently classifiable under subheadings 7307.21.1000 and 7307.21.5000 of the Harmonized Tariff Schedule (HTS). Although the HTS subheading is provided for convenience and customs purposes, the written description of the merchandise under review is dispositive of whether or not the merchandise is covered by the scope of the order.

Rescission in Part

As indicated above, on April 25, 2008, and June 5, 2008, Echjay and Hotmetal, respectively, withdrew their requests for administrative review. Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the party who requested the review withdraws the request within ninety days of the date of publication of notice of initiation of the requested review. Because Echjay and Hotmetal withdrew their requests for review within the 90-day period and no other party requested a review of their sales, in accordance with 19 CFR 351.213(d)(1), we are rescinding this review with respect to these companies.

Intent to Rescind

As indicated above, we have preliminarily determined that Pradeep's single sale to the United States during the POR was not *bona fide*. We based our determination on the following factors: (1) the timing of the sale; (2) the U.S. price and expenses associated with the sale were high; and (3) the sale involved a method of shipping not standard for the industry. For further information, *see* the Memorandum to the File, ''*Bona Fide* Nature of the Sale in the Administrative Review of Pradeep Metals Limited,'' dated July 28, 2008, for a complete explanation of our analysis. Based on these factors, we preliminarily intend to rescind this administrative review.

Public Comment

Interested parties are invited to comment on this preliminary intent to rescind. Pursuant to 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs no later than 30 days after the date of publication of this notice. Pursuant to 19 CFR 351.309(d), rebuttal briefs, limited to issues raised in the case briefs and comments, may be filed no later than 5 days after the time limit for filing the case briefs. Parties who submit argument in these proceedings are requested to submit with the argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Further, the Department requests parties submitting written comments to provide the Department with an additional copy of the public version of any such comments on diskette.

Assessment Rates

The Department will issue appropriate assessment instructions for Echjay and Hotmetal directly to the U.S. Customs and Border Protection (CBP) fifteen days after the publication of this notice. The Department will direct CBP to assess antidumping duties at the cash deposit rate in effect on the date of entry for entries of subject merchandise produced and/or exported by Echjay or Hotmetal during the period February 1, 2007 through January 31, 2008.

With respect to Pradeep, if a final rescission notice is published at the completion of this administrative review, a cash deposit rate of 162.14 percent *ad valorem* shall continue to be collected for any entries produced by Pradeep. Should the Department reach a final result other than a rescission, we will calculate an appropriate antidumping duty rate for both assessment and cash deposit purposes. The Department intends to issue assessment instructions to CBP fifteen days after the date of publication of the final rescission or final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Notice of Policy Concerning Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (Assessment Policy Notice). This clarification will apply to entries of subject merchandise during the POR produced by Pradeep for which Pradeep did not know that the merchandise it sold to an intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the 162.14 percent all–others rate established in the original less than fair value (LTFV) investigation if there is no rate for the intermediary involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

Notification to Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act and 19 CFR 351.221(b)(4).

Dated: July 28, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–17711 Filed 7–31–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XJ44

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene its Socioeconomic Panel (SEP).

DATES: The meeting will be convene at 8:30 a.m. on Tuesday, August 19, 2008 and conclude no later than 5 p.m. on Wednesday, August 20, 2008.

ADDRESSES: The meeting will be held at the Embassy Suites, 555 N. Westshore Blvd., Tampa, FL 33609; telephone: (813) 875–1555.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Assane Diagne, Economist, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council (Council) will convene its Socioeconomic Panel (SEP) to discuss Reef Fish Amendment 29, the Aquaculture Fishery Management Plan (FMP), draft principles for allocation, and socio-economic aspects of allocation. Reef Fish Amendment 29 proposes to rationalize effort and reduce overcapacity in the commercial grouper and tilefish fisheries in order to achieve and maintain optimum yield (OY). Effort management approaches considered in this amendment include permit endorsements and the implementation of an Individual Fishing Quota (IFQ) program. The Aquaculture FMP will require persons to obtain a permit from NMFS to participate in aquaculture by constructing an aquaculture facility in the EEZ of the Gulf of Mexico. Each application for a permit must comply with many permit conditions related to record keeping and operation of the facility. These permit conditions will assure the facility has a minimal affect on the environment and on other fishery resources. Compliance with the conditions will be evaluated annually for the duration of the permit as the basis for renewal of the permit for the next year.

A copy of the agenda and related materials can be obtained by calling the Council office at (813) 348–1630.

Although other non-emergency issues not on the agendas may come before the SEP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions of the SEP will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina O'Hern at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: July 29, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–17642 Filed 7–31–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XJ43

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council's (Council) Groundfish Oversight Committee will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, August 26, 2008, at 9 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn, One Newbury Street, Route 1, Peabody, MA 01960; telephone: (978) 535–4600.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The items of discussion in the committee's agenda are as follows:

The Groundfish Oversight Committee will meet to continue development of Amendment 16 to the Northeast Multispecies Fishery Management Plan (FMP). Amendment 16 will adjust management measures as necessary to continue stock rebuilding. The Committee will review preliminary reports of stock status. Based on that information, Committee members will begin to develop recommendations for any adjustments to rebuilding plans that are needed. This will include recommendations for target fishing mortality rates as well as changes to measures that will achieve the targeted rates. The Committee may also review sector policies, the setting of annual catch limits, accountability measures, and other amendment alternatives. Committee recommendations will be presented to the New England Fishery Management Council at a later meeting.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: July 29, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–17733 Filed 7–31–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XJ47

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council's (Council)Coastal Pelagic Species Management Team (CPSMT) and Coastal Pelagic Species Advisory Subpanel (CPSAS) will hold a joint work session by telephone conference, which is open to the public, to develop recommendations for the September 2008 Council meeting.

DATES: The telephone conference will be held Tuesday, August 19, 2008, from 1 p.m. to 5 p.m. or when business for the day is completed.

ADDRESSES: A listening station will be available at the Pacific Fishery Management Council, Small Conference Room, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384; telephone: (503) 820–2280.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Burner, Coastal Pelagic Species Staff Officer, Pacific Fishery Management Council: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the work session is to review the proposed rule on revisions to National Marine Fishery Service guidelines for National Standard 1 of the Magnuson-Stevens Fishery Conservation and Management Act and other available information for the Council's September meeting briefing book and to develop comments and recommendations for consideration at the September 2008 Council meeting.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. CPSMT and CPSAS actions will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: July 29, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–17643 Filed 7–31–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Notice: Call for Applications, Commerce Spectrum Management Advisory Committee

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce

ACTION: Notice and Request for Applications to Serve on Advisory Committee

SUMMARY: The National Telecommunications and Information Administration (NTIA) is seeking applications from persons interested in serving on the Commerce Spectrum Management Advisory Committee (CSMAC) for new two year terms to commence in December 2008. The CSMAC provides advice to the Assistant Secretary for Communications and Information and NTIA Administrator on spectrum management matters.

DATES: Nominations must be postmarked or electronically transmitted on or before September 2, 2008.

ADDRESSES: Persons wishing to submit applications should send their resume or curriculum vita and a statement summarizing the qualifications of the nominee and identifying any particular expertise or area of interest relevant to the CSMAC's work to the attention of Eric Stark, Designated Federal Officer, by mail to Office of the Assistant Secretary, National Telecommunications and Information Administration, 1401 Constitution Avenue N.W., Room 4725, Washington DC, 20230; by facsimile transmission to (202) 482–6173; or by electronic mail to spectrumadvisory@ntia.doc.gov.

FOR FURTHER INFORMATION CONTACT: Eric Stark at (202) 482–1880 or estark@ntia.doc.gov; or Joe Gattuso at (202) 482–0977 or jgattuso@ntia.doc.gov.

SUPPLEMENTARY INFORMATION: On November 29, 2004, the President issued a Memorandum for the Heads of Executive Departments and Agencies on the subject of ''Spectrum Management for the 21st Century.''[1] Among other things, the Executive Memorandum directed the heads of the executive departments and agencies to implement the recommendations contained in two Commerce Department reports to the President identifying improvement in U.S. spectrum management.[2] The first recommendation in Report 2 called for the establishment of a federal advisory committee by the National Telecommunications and Information Administration (NTIA).[3]

Pursuant to the Executive Memorandum, the Secretary of Commerce established the CSMAC under the Federal Advisory Committee Act, 5 U.S.C. App. 2 and consistent with the National Telecommunications and Information Administration Act, 47 U.S.C. § 904(b). The CSMAC reports to the Assistant Secretary for Communications and Information. It advises the Assistant Secretary on needed reforms to domestic spectrum policies and management to enable the introduction of new spectrum-dependent technologies and services, including policy reforms for expediting the American public's access to broadband services, public safety, and digital television, as well as on long-range spectrum planning. The CSMAC functions solely as an advisory body in compliance with the FACA. The CSMAC's charter may be found a http://www.fido.gov/facadatabase/docs__charters%5C25109__Spectrum%20Charter%203-28-07__(2007-03-30-10-34-21).pdf. Additional information about the CSMAC and its activities may be found at http://www.ntia.doc.gov/advisory/spectrum.

Members of the CSMAC are experts in radio spectrum policy and do not

[1] *President's Memorandum on Improving Spectrum Management for the 21st Century*, 49 Weekly Comp. Pres. Doc. 2875 (Nov. 29, 2004)(Executive Memorandum).

[2] *See* Department of Commerce, *Spectrum Policy for the 21st Century - The President's Spectrum Policy Initiative: Report 1, Recommendations of the Federal Government Spectrum Task Force* (June 2004); *Department of Commerce, Spectrum Policy for the 21st Century - The President's Spectrum Policy Initiative: Report 2, Recommendations from State and Local Governments and Private Sector Responders* (June 2004)(*Report 2*), available at http://www.ntia.doc.gov/reports/specpolini/presspecpolini__report2__06242004.pdf

[3] ''The National Telecommunications and Information Administration (NTIA) should establish the Department of Commerce Spectrum Management Advisory Committee, consistent with the Federal Advisory Committee Act [5 U.S.C. App.2] and the NTIA Organizations Act [47 U.S.C. § 904(b)]. *Report 2* at ii, 14-15.''

represent any organization or interest. They serve on the CSMAC in the capacity of Special Government Employees. They do not receive compensation or reimbursement for travel or for per diem expenses.

The CSMAC's charter allows it to have up to 20 members. Current members of the CSMAC are not required to submit applications in order to be reappointed; however, reappointments are not automatic. Appointments are for two-year terms, subject to continuation of the CSMAC under its charter. NTIA intends to seek renewal of the current charter, which expires March 27, 2009.

The Secretary of Commerce will appoint members with a broad cross-section of points of views from the private and non-federal government sectors. The Department of Commerce seeks high level individuals with expertise in those sectors and interests on spectrum policy issues relevant to the CSMAC.

Nominations should include a resume or curriculum vita and should also include a statement summarizing the qualifications of the nominee and identifying any particular expertise or area of interest relevant to the CSMAC's work.

Dated: July 29, 2008.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. E8–17693 Filed 7–31–08; 8:45 am]

BILLING CODE 3510–60–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Notification of Upcoming Meeting of the Defense Advisory Board for Employer Support of the Guard and Reserve (DAB–ESGR)

AGENCY: Department of Defense.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Defense Advisory Board for Employer Support of the Guard and Reserve. This meeting will focus on the status of recruitment efforts for the Board and recommendations made at prior meetings. This meeting is open to the public.

DATES: September 18, 2008 (1300–1500 hrs).

ADDRESSES: McPherson Room, Hamilton Crowne Plaza, 14th and K Street, NW., Washington, DC 20005.

The public is asked to pre-register three weeks in advance of the meeting due to security and or seating limitations. (see below information for pre-registration).

FOR FURTHER INFORMATION CONTACT: Interested attendees may contact MAJ Elaine M. Gullotta at 703–696–1385 ext 540, or e-mail at *elaine.gullotta@osd.mil*.

SUPPLEMENTARY INFORMATION:

Agenda

1300 Convene, (Mr. James G. Rebholz, Chairman).
1305 Minutes approval, Status of Recommendation from last meeting (Mr. Rebholz, Mr. Patel).
1340 Review and discussion of DAB Nomination Outreach Efforts (Mr. Rebholz).
1420 Board Discussion, Due Outs-Subcommittee tasks (Mr. Rebholz).
1430 Summary of Proceedings, Administrative Announcements.
1440 Photographs (ESGR PAO Staff).
1500 Adjourn.

(a) Background

The purpose of the Board is to provide independent advice and recommendations to the Secretary of Defense on matters that arise from the military obligation of members of the National Guard and Reserve members and the impact on their civilian employment.

(b) Availability of Materials for the Meeting

Please see the Federal Advisory Committee Act Web site for copies of any available materials, including draft agendas for the meeting and background information. (*http://www.fido.gov/facadatabase/form_meetings.asp*).

(c) Procedures for Providing Public Comments

It is the policy of the DAB–ESGR to accept written public comments of any length, and to accommodate oral public comments whenever possible. To facilitate Board discussion at its meetings, the Board may not accept oral comments at all meetings, The Board Staff expect that public statements presented at Board meetings will be focused on the Board's statutory charter and any working group topics.

Oral Comments: Speaking times will be confirmed by Board staff on a ''first-come/first-served basis. To accommodate as many speakers as possible, oral public comments must be no longer than 3 minutes. Because the Board members may ask questions, reserved times will be approximate. Interested parties must contact MAJ Elaine Gullotta in writing (via mail or e-mail) at least three weeks prior to the meeting.

Written Comments: Written comments should be received by the Board staff at least three weeks prior to the meeting date so that the comments may be made available to the Board for consideration prior to the meeting. Written comments should be supplied to MAJ Elaine Gullotta in one of the following formats (Word, PDF) via mail or e-mail at least three weeks prior to the meeting.

Please Note: The Board operates under the provisions of the Federal Advisory Committee Act, as amended. All public presentations will be treated as public documents and will be made available for public inspection, up to and including being posted on the Federal Advisory Committee Web site.

Written Comments may be sent to: Employer Support of the Guard and Reserve, 1555 Wilson Blvd., Suite 200, Arlington, VA 22209, Attention: MAJ Elaine Gullotta.

Dated: July 25, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–17610 Filed 7–31–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Nuclear Weapons Surety will meet in closed session.

DATES: August 22, 2008.

ADDRESSES: Institute for Defense Analyses, 4850 Mark Center Drive, Alexandria, VA.

FOR FURTHER INFORMATION CONTACT: Mr. David McDarby, HQ DTRA/OP–CSNS, 8725 John J. Kingman Road, Stop 6201, Ft. Belvoir, VA 22060; via e-mail at *david.mcdarby@dtra.mil*; or via phone at (703) 767–4364.

SUPPLEMENTARY INFORMATION: The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At the meeting, the Defense Science Board Task Force will: Assess all aspects of nuclear weapons surety; continue to build on the work of the former Joint Advisory Committee on Nuclear Weapons Surety, the Nuclear C2 System End-to-End

Review and the Drell Panel; and review and recommend methods and strategies to maintain a safe, secure and viable nuclear deterrent.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. 2), it is hereby determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that accordingly, the meetings will be closed to the public.

The task force's findings and recommendations, pursuant to 41 CFR 102–3.140 through 102–3.165, will be presented and discussed by the membership of the Defense Science Board prior to being presented to the Government's decision maker.

Pursuant to 41 CFR 102–3.120 and 102–3.150, the Designated Federal Officer for the Defense Science Board will determine and announce in the **Federal Register** when the findings and recommendations of the August 22, 2008, meeting are deliberated by the Defense Science Board.

Interested persons may submit a written statement for consideration by the Defense Science Board. Individuals submitting a written statement must submit their statement to the Designated Federal Official at the address detailed above, at any point, however, if a written statement is not received at least 10 calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Defense Science Board. The Designated Federal Official will review all timely submissions with the Defense Science Board Chairperson, and ensure they are provided to members of the Defense Science Board before the meeting that is the subject of this notice.

Dated: July 25, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–17606 Filed 7–31–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of Army

[Docket ID: USA–2008–0049]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to delete a system of records.

SUMMARY: The Department of the Army is deleting a system of records in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed actions will be effective without further notice on September 2, 2008 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Department of the Army, Records Management and Declassification Agency, Privacy Division, 7701 Telegraph Road, Alexandria, VA 22315.

FOR FURTHER INFORMATION CONTACT: Ms. Vicki Short at (703) 428–6508.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of Army proposes to delete a system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: July 25, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

A0055–355a DALO

SYSTEM NAME:

Local transportation Authorization and Use Files (February 22, 1993, 58 FR 10002).

REASON:

These records are no longer collected or maintained by Army G–4, they are covered under Privacy Act System of Records Notice T7334, Defense Travel System (September 8, 2004, 69 FR 54272).

[FR Doc. E8–17602 Filed 7–31–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2008–0047]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 2, 2008, unless comments are received which result in a contrary determination.

ADDRESSES: Department of the Army, Freedom of Information/Privacy Division, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

FOR FURTHER INFORMATION CONTACT: Ms. Vicki Short at (703) 428–6508.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: July 25, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

A0027–20a DAJA

SYSTEM NAME:

U.S. Army Claims Service Management Information System (April 4, 2003, 68 FR 16484).

CHANGES:

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with ''After 6 years, 3 months (investigative reports, except those relating to medical malpractice); or 10 years (medical malpractice investigative reports, claims files).''

* * * * *

A0027–20a DAJA

SYSTEM NAME:

U.S. Army Claims Service Management Information System.

SYSTEM LOCATION:

U.S. Army Claims Service, Office of the Judge Advocate General, ATTN: JACS–Z, 4411 Llewellyn Avenue, Fort Meade, MD 20755–5360. Segments exist

at subordinate field operating agencies and at Staff Judge Advocate Offices at Army installations throughout the world. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals, corporations, associations, countries, states, territories, political subdivisions presenting a claim against the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of claimant, claim file number, type of claim presented, reports of investigation, witness statements, police reports, photographs, diagrams, bills, estimates, expert opinions, medical records and similar reports, copy of correspondence with claimant, potential claimants, third parties, and insurers of claimants or third parties, copies of finance vouchers evidencing payment of claims, and similar relevant information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 31 U.S.C. 3711, Collection and Compromise; Army Regulation 27–20, Claims; and E.O. 9397 (SSN).

PURPOSE(S):

To develop and preserve all relevant evidence about incidents, which generate claims against or in favor of the Army. Evidence developed is used as a legal basis to support the settlement of claims. Data are also used as a management tool to supervise claims operations at subordinate commands worldwide. Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Internal Revenue Service for tax purposes.

To the Department of Justice for assistance in deciding disposition of claims filed against or in favor of the Government and for considering criminal prosecution, civil court action or regulatory orders.

To the U.S. Claims Court and the Court of Appeals for the Federal Circuit, to support legal actions, considerations or evidence to support proposed legislative or regulatory changes, for budgetary purposes, for quality control or assurance type studies, or to support action against a third party.

To Foreign governments for use in settlements of claims under the North Atlantic Treaty Organization Status of Forces Agreement or similar international agreements.

To the State governments for use in defending or prosecuting claim by the state or its representatives.

To the Department of Labor, for consideration in determining rights under Federal Employees Compensation Act or similar legislation.

To civilian and Government experts for assistance in evaluating the claim.

To the Office of Management and Budget for preparation of private relief bills for presentation to the Congress.

To Government contractors for use in defending or settling claims filed against them, including recovery actions, arising out of the performance of a Government contract.

To Federal and state workmen's compensation agencies for use in adjudicating claims.

To private insurers with a legal interest in the same case.

To potential joint tort-feasors or their representatives for the purpose of prosecuting or defending claims for contribution or indemnity.

Information from this system of records may also be disclosed to law students participating in a volunteer legal support program approved by the Judge Advocate General of the Army.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By last name, Social Security Number, or claim number.

SAFEGUARDS:

Records are accessible only by authorized personnel who are properly instructed in the permissible use of the information, buildings housing records are locked after normal business hours.

RETENTION AND DISPOSAL:

After 6 years, 3 months (investigative reports, except those relating to medical malpractice); or 10 years (medical malpractice investigative reports, claims files).

SYSTEM MANAGER(S) AND ADDRESS:

The Judge Advocate General, Headquarters, Department of the Army, 2200 Army Pentagon, Washington, DC 20310–2200.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Army Claims Service, 4411 Llewellyn Avenue, Fort Meade, MD 20755–5360.

Individual should provide full name, current address and telephone number, claim number if known, date and place of incident giving rise to the claim, and any other personal identifying data that would assist in determining location of the records.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army Claims Service, 4411 Llewellyn Avenue, Fort Meade, MD 20755–5360.

Individual should provide full name, current address and telephone number, claim number if known, date and place of incident giving rise to the claim, and any other personal identifying data that would assist in determining location of the records.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records contesting contents, and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; investigative reports originating in the Department of the Army, Federal Bureau of Investigation, and/or foreign, state, or local law enforcement agencies; medical treatment facilities; Armed Forces Institute of Pathology; relevant records and reports in the Department of Defense.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–17604 Filed 7–31–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2008–0046]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 2, 2008 unless comments are received which result in a contrary determination.

ADDRESSES: Department of the Army, Freedom of Information/Privacy Division, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

FOR FURTHER INFORMATION CONTACT: Ms. Vicki Short at (703) 428–6508.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: July 25, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

A0027–20d DAJA

SYSTEM NAME:

Medical Expense Claim Files (February 22, 1993, 58 FR 10002).

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 3013, Secretary of the Army; 42 U.S.C. 2651–3, Recovery by United States; Army Regulation 27–20, Claims; and E.O. 9397 (SSN).''

* * * * *

STORAGE:

Delete entry and replace with ''Paper records in file folders and electronic storage media.''

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with ''Records at the Judge Advocate General's Office are destroyed 10 years after final action; i.e., completion of litigation or determination that case will not be prosecuted. Claims settled by local Staff Judge Advocates are destroyed 6 years and 3 months after final action.''

* * * * *

A0027–20d DAJA

SYSTEM NAME:

Medical Expense Claim Files.

SYSTEM LOCATION:

Staff Judge Advocate Offices at Army commands, field operating agencies, installations and activities. A segment of the system is located at U.S. Army Claims Service, Fort Meade, MD 20755–5360.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have received medical treatment at the expense of the U.S. Army as a result of a tortuous or negligent act of a third party; third parties causing medical care to be furnished to individuals entitled to medical care at Government expense.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of medical and personnel records of individuals injured by a third party from whom the U.S. Army is seeking to recover the costs of medical care furnished the injured party; accident and police reports relating to the injury, claims investigation files; correspondence with attorneys representing the Army's interest; court documents; and similar pertinent documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 42 U.S.C. 2651–3, Recovery by United States; Army Regulation 27–20, Claims; and E.O. 9397 (SSN).

PURPOSE(S):

To negotiate with the tort-feasor or an insurance carrier, or to sue the same to collect the value of medical care furnished the injured party.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to the Department of Justice, appropriate U.S. Attorneys, civilian attorneys representing the injured party who agree also to represent the U.S. Army's claim, and opposing parties and their attorneys.

Information from this system of records may be disclosed to law students participating in a volunteer legal support program approved by the Judge Advocate General of the Army.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By individual's surname, Social Security Number, and court docket number.

SAFEGUARDS:

Records are accessible only by authorized personnel who are properly instructed in the permissible use of the information.

RETENTION AND DISPOSAL:

Records at the Judge Advocate General's Office are destroyed 10 years after final action; i.e., completion of litigation or determination that case will not be prosecuted. Claims settled by local Staff Judge Advocates are destroyed 6 years and 3 months after final action.

SYSTEM MANAGER(S) AND ADDRESS:

The Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2210.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2210.

Individual should provide full name, current address and telephone number, case number that appeared on documentation, any other information that will assist in locating pertinent records, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2210.

Individual should provide full name, current address and telephone number, case number that appeared on documentation, any other information that will assist in locating pertinent records, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; Army records and reports; Office of Personnel Management; Department of Justice, U.S. Attorneys, opposing counsel, and similar pertinent sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–17607 Filed 7–31–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2008–0048]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 2, 2008 unless comments are received which result in a contrary determination.

ADDRESSES: Department of the Army, Freedom of Information/ Privacy Division, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

FOR FURTHER INFORMATION CONTACT: Ms. Vicki Short at (703) 428–6508.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: July 25, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

A0027–20b DAJA

SYSTEM NAME:

Tort Claim Files (February 1, 1996, 61 FR 3682).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with ''Tort Claim Files in Litigation.''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 3013, Secretary of the Army; 28 U.S.C. 2671–2680, Judiciary and Judicial Procedure; Army Regulation 27–20, Claims; and E.O. 9397 (SSN).''

* * * * *

STORAGE:

Delete entry and replace with ''Paper records in file folders and electronic storage media.''

* * * * *

A0027–20b DAJA

SYSTEM NAME:

Tort Claim Files in Litigation

SYSTEM LOCATION:

Office of the Judge Advocate General, U.S. Army Litigation Division, 901 N. Stuart Street, Suite 400, Arlington, VA 22203–1837.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed a complaint against the U.S. Army in the U.S. District Court under the Federal Tort Claims Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Pleadings, motions, briefs, orders, decisions, memoranda, opinions, supporting documentation, and allied material, including claims investigation, reports and files involved in representing the U.S. Army in the Federal Court System.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 28 U.S.C. 2671–2680, Judiciary and Judicial Procedure; Army Regulation 27–20, Claims; and E.O. 9397 (SSN).

PURPOSE(S):

To defend the Army in civil suits filed against it in state or federal courts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information is disclosed to the Department of Justice and United States Attorneys' offices handling the particular case. Most of the information is filed in some manner in the courts in which the litigation is pending and therefore is a public record. In addition, some of the information will appear in the written orders, opinions, and decisions of the courts which, in turn, are published in the Federal Reporter System under the name or style of the case and are available to individuals with access to a law library.

Information from this system of records may also be disclosed to law students participating in a volunteer legal support program approved by the Judge Advocate General of the Army.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

Retrieved by claimant's surname and court docket number.

SAFEGUARDS:

Records are maintained in file cabinets within secured buildings and available only to designated authorized individuals who have official need for them.

RETENTION AND DISPOSAL:

Records are destroyed 10 years after final action on the case.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Judge Advocate General, Department of the Army, 2200 Army Pentagon, Washington, DC 20310–2200.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief, U.S. Army Litigation Division, 901 N. Stuart Street, Suite 400, Arlington, VA 2203–1837.

Individuals should provide full name, current address and telephone number, case number that appeared on documentation, any other information that will assist in locating pertinent records and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief, U.S. Army Litigation Division, 901 N. Stuart Street, Suite 400, Arlington, VA 2203–1837.

Individual should provide full name, current address and telephone number, case number that appeared on documentation, any other information that will assist in locating pertinent records and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–17609 Filed 7–31–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2008–0028]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Navy is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 2, 2008 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: July 25, 2008.

Patricia Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

NM01070–9

SYSTEM NAME:

White House Support Program (April 15, 2008, 73 FR 20264)).

CHANGES:

* * * * *

SYSTEM LOCATION:

At end of entry, add ''and Naval Support Facility (NSF), Thurmont, P.O. Box 1000, Thurmont, MD 21788–5100.''

* * * * *

NM01070–9

SYSTEM NAME:

White House Support Program.

SYSTEM LOCATION:

White House Liaison Office, Office of the Secretary of the Navy, 1000 Navy Pentagon, Washington, DC 20350–1000 and Naval Support Facility (NSF), Thurmont, P.O. Box 1000, Thurmont, MD 21788–5100.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Navy and Marine Corps military and civilian personnel and contractor employees who had been nominated by their employing activities for assignment to Presidential support duties.

CATEGORIES OF RECORDS IN THE SYSTEM:

White House Military Office Security Screening Questionnaire; personnel records; name, Social Security Number (SSN); photographs; fingerprint cards; interview sheet; correspondence, documents and records concerning classification, security clearances, assignment, training, and other qualifications relating to suitability for Presidential support duties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; and E.O. 9397 (SSN).

PURPOSE(S):

To evaluate and nominate individuals for assignment to Presidential support duties and to ensure that only those individuals most suitably qualified are assigned to duty in Presidential support activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To officials and employees in the Executive Office of the President in the performance of their duties related to personnel administration, and evaluation and nomination of individuals for assignment to Presidential support duties.

To officials and employees of other federal agencies and offices, upon request, in the performance of their official duties related to the provision of Presidential support and protection.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and automated records/databases.

RETRIEVABILITY:

Name and/or Social Security Number (SSN).

SAFEGUARDS:

Records are afforded appropriate protection at all times, stored in locked

rooms and locked file cabinets, and are accessible only to authorized personnel who have a definite need-to-know and who are properly screened, cleared, and trained. Access to automated information is password protected and only available to individuals with an official need-to-know.

RETENTION AND DISPOSAL:

Successful candidate's package held for one year past period of tour. Unsuccessful candidate's package destroyed within 1 year.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Aide to the Secretary of the Navy, 1000 Navy Pentagon, Washington, DC 20350–1000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Office of the Administrative Aide to the Secretary of the Navy, 1000 Navy Pentagon, Washington, DC 20350–1000.

Individual should sign their request and provide full name and Social Security Number (SSN).

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Office of the Administrative Aide to the Secretary of the Navy, 1000 Navy Pentagon, Washington, DC 20350–1000.

Individual should sign their request and provide full name and Social Security Number (SSN).

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Officials and employees of the Department of the Navy and other Department of Defense components; federal, state, and local court documents; civilian and military investigative reports; general correspondence concerning the individual; and federal and state agency records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under 5 U.S.C. 552a(k)(1), (k)(2), (k)(3) and (k)(5), as applicable.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 701, subpart G. For additional information contact the system manager.

[FR Doc. E8–17598 Filed 7–31–08; 8:45 am]

BILLING CODE 5001–06–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: U.S. Election Assistance Commission.

ACTION: Notice of Public Meeting (Amended).

DATE AND TIME: Tuesday, August 5, 2008, 12 Noon–3 p.m.

PLACE: U.S. Election Assistance Commission, 1225 New York Ave, NW., Suite 150, Washington, DC 20005 (Metro Stop: Metro Center).

AGENDA: Commissioners will hold a workshop discussion on Preparing for Election Day 2008 and Statewide Voter Registration Databases. Commissioners will consider and vote on whether to modify Advisory Opinion 07–003–A regarding Maintenance of Effort (MOE) funding, pursuant to HAVA Section 254(a)(7). Commissioners will consider and vote on a Proposed Replacement Advisory Opinion 07–003–B Regarding Maintenance of Effort. Commissioners will consider a Draft Policy for Notice and Public Comment; Commissioners will consider a Draft Policy for Joint Partnership Task Force of EAC and State Election Officials Regarding Spending of HAVA Funds; Commissioners will consider Proposed Administrative Regulations. Commissioners will receive a briefing regarding the Research Department Work Plan. The Commission will consider other administrative matters.

This meeting will be open to the public.

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener, Telephone: (202) 566–3100.

Rosemary E. Rodriguez,

Chair, U.S. Election Assistance Commission.

[FR Doc. E8–17751 Filed 7–31–08; 8:45 am]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Rebuild of the Libby (FEC) to Troy Section of BPA's Libby to Bonners Ferry 115-Kilovolt Transmission Line Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of availability of Record of Decision (ROD).

SUMMARY: This notice announces the availability of the ROD to implement the Proposed Action with the Kootenai River Crossing realignment option that was identified in the Rebuild of the Libby (FEC) to Troy Section of BPA's Libby to Bonners Ferry 115-kilovolt Transmission Line Project Final Environmental Impact Statement (DOE/EIS–0379, May 2008). BPA has decided to rebuild the 17-mile-long Libby-Troy section of the existing transmission line in Lincoln County, Montana at the same voltage (115 kilovolt (kV)) with the same number of circuits (one). BPA will rebuild this section of line using a combination of wood and steel H-frame and single pole structures. BPA will also acquire additional transmission line corridor width through new easements or permitted areas in some sections to bring the corridor up to BPA's minimum width standards for 115-kV transmission line operation. Helicopters will be used for constructing the rebuilt line, except in the Big Horn Terrace and Pipe Creek residential areas, where all construction will occur from the ground. The Kootenai River Crossing realignment option will move the Kootenai River line crossing about 0.75 mile east of the existing crossing and require acquisition of new easements and permitted areas. All mitigation measures identified in the EIS are adopted.

ADDRESSES: Copies of the ROD and EIS may be obtained by calling BPA's toll-free document request line, 1–800–622–4520. The ROD and EIS Summary are also available on our Web site, *http://www.efw.bpa.gov*.

FOR FURTHER INFORMATION CONTACT: Tish Eaton, Bonneville Power Administration—KEC–4, P.O. Box 3621, Portland, Oregon 97208–3621; toll-free telephone number 1–800–622–4519; fax number 503–230–5699; or e-mail *tkeaton@bpa.gov*.

Issued in Portland, Oregon, on July 25, 2008.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. E8–17726 Filed 7–31–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–446–000]

Perryville Gas Storage LLC; Notice of Application

July 25, 2008.

Take notice that on July 24, 2008, Perryville Gas Storage LLC (Petitioner), Three Riverway, Suite 400, Houston, TX 77056, filed in Docket No. CP08–446–000, a petition for Exemption of Temporary Acts and Operations from Certificate Requirements, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure, and section 7(c)(1)(B) of the Natural Gas Act (NGA), to perform specific temporary activity related to drill site preparation and the drilling of two stratigraphic test wells located in Franklin Parish, Louisiana to determine the feasibility of rock mechanics for storage development and the feasibility of brine disposal, and to drill fresh water supply test well to determine the availability of water supplies, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, call (202) 502–8659 or TTY, (202) 208–3676.

Any questions regarding this application should be directed to David Hayden, Sr. VP and COO, Cardinal Gas Storage Partners, Three Riverway, Suite 400, Houston, TX 77056 at (713) 350–6844.

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

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.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

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 15, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–17624 Filed 7–31–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12965–001]

Wickiup Hydro, LLC; Notice of Intent To File License Application, Filing Of Pre-Application Document, Commencement of Licensing Proceeding, and Scoping; Request for Comments on the Pad and Scoping Document, and Identification of Issues and Associated Study Requests

July 25, 2008.

a. *Type of Filing:* Notice of Intent to File License Application for a New License and Commencing Licensing Proceeding.

b. *Project No.:* 12965–001.

c. *Dated Filed:* January 22, 2008.

d. *Submitted by:* Wickiup Hydro, LLC.

e. *Name of Project:* Wickiup Dam Hydroelectric Project.

f. *Location:* On the Deschutes River, in Deschutes County, Oregon. The project would use the U.S. Bureau of Reclamation's Wickiup Dam. The

project would occupy lands in the Deschutes National Forest managed by the U.S. Forest Service.

g. *Filed Pursuant to:* 18 CFR part 5 of the Commission's Regulations.

h. *Potential Applicant Contact:* Mr. Brent Smith, COO, Symbiotics, LLC, P.O. Box 535, Rigby, Idaho 83442, (208) 745–0834.

i. *FERC Contact:* Jim Puglisi at (202) 502–6241 or e-mail at *james.puglisi@ferc.gov*.

j. We are asking federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in paragraph o below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See*, 94 FERC ¶ 61,076 (2001).

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, part 402, and (b) the State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Wickiup Hydro, LLC as the Commission's non-federal representative for carrying out informal consultation, pursuant to Section 7 of the Endangered Species Act and Section 106 of the National Historic Preservation Act.

m. Wickiup Hydro, LLC filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*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 paragraph h.

Register online at *http://ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are soliciting comments on the PAD and Scoping Document 1 (SD1), as well as study requests. All comments on the PAD and SD1, and study requests, should be sent to the address above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application (original and eight copies) must be filed with the Commission at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All filings with the Commission must include on the first page the project name (Wickiup Dam Hydroelectric Project) and number (P–12965–001) and bear the heading ''Comments on Pre-Application Document,'' ''Study Requests,'' ''Comments on Scoping Document 1,'' ''Request for Cooperating Agency Status,'' or ''Communications to and from Commission Staff.'' Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by September 23, 2008.

Comments on the PAD and SD1, study requests, requests for cooperating agency status, and other permissible forms of communications with the Commission 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.

p. Although our current intent is to prepare an environmental assessment (EA), there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

Scoping Meetings

Commission staff will hold two scoping meetings in the vicinity of the project at the time and place noted below. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the evening meeting is primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

Daytime Scoping Meeting

Date: Wednesday, August 20, 2008.

Time: 9 a.m.–2p.m. (PST).

Location: Deschutes National Forest Supervisors Office, 1001 SW., Emkay Drive, Bend, OR 97702.

Phone: (541) 383–5800.

Evening Scoping Meeting

Date: Tuesday, August 19, 2008.

Time: 7 p.m.–10 p.m.(PST).

Location: La Pine Senior Center, 16450 Victory Way, La Pine, OR 97739.

Phone: (541) 536–6237.

Scoping Document 1 (SD1), which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list. Copies of SD1 will be available at the scoping meetings, or may be viewed on the web at *http://www.ferc.gov*, using the ''eLibrary'' link. Follow the directions for accessing information in paragraph n. Based on all oral and written comments, a Scoping Document 2 (SD2) may be issued. SD2 may include a revised process plan and schedule, as well as a list of issues, identified through the scoping process.

Site Visit

The potential applicant and Commission staff will conduct a site visit of the project on Tuesday, August 19, 2008, starting at 10 a.m. at Wickiup dam. From Bend, head south on Highway 97 approximately 23 miles to Burgess Road. Turn right (west) on Burgess Road. Proceed west on Burgess Road for about 10 miles. Turn left (south) on Wickiup Road. Proceed south on Wickiup Road to Wickiup dam. Turn left (east) at the base of the dam and go to the parking area located on the stability berm. All participants are responsible for their own transportation. Anyone with questions about the site visit should contact Eric Steimle of Wickiup Hydro, LLC at (503) 235–3424.

Meeting Objectives

At the scoping meetings, staff will: (1) Initiate scoping of the issues; (2) review and discuss existing conditions and resource management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the

Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss the appropriateness of any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and SD1 are included in item n. of this document.

Meeting Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission's proceeding on the project.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–17636 Filed 7–31–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL08–77–000]

Central Maine Power Company, Maine Public Service Company; Notice of Filing

July 25, 2008.

Take notice that on July 18, 2008, Central Maine Power Company and Maine Public Service Company filed a petition for declaratory order, pursuant to section 385.207 of the Commission's regulations, requesting transmission rate incentives for its Maine Power Connection Project, pursuant to section 219 of the Federal Power Act.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 18, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–17625 Filed 7–31–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL08–78–000]

Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc.; Notice of Filing

July 25, 2008.

Take notice that on July 18, 2008, the Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc. (collectively, ComEd) tendered for filing a Petition for Declaratory Order for Incentive Rate Treatment.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 18, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–17626 Filed 7–31–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER06–510–002]

Energy Endeavors, LLC; Notice of Filing

July 25, 2008.

Take notice that on July 14, 2008, Energy Endeavors, LLC tendered for filing Order No. 697 Compliance Filing and Application for Category 1 status pursuant to section 205 of the Federal Power Act.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.*

Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 4, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–17628 Filed 7–31–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER08–1106–001]

MATL LLP; Notice of Filing

July 25, 2008.

Take notice that on July 23, 2008, MATL LLP tendered for filing a supplement amending their June 13, 2008 filing. The June 13, 2008 filing changed the creditworthiness procedures set for in Attachment L of its Open Access Transmission Tariff in the above-referenced proceeding.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 1, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–17629 Filed 7–31–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RR07–16–004]

North American Electric Reliability Corporation; Notice of Filing

July 25, 2008.

Take notice that on July 25, 2008, the North American Electric Reliability Corporation tendered for filing an amendment to their July 21 Compliance Filing in the above-referenced proceeding.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 14, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–17623 Filed 7–31–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER03–295–003; ER04–1194–001]

SESCO Enterprises, LLC SESCO Enterprises Canada, Ltd.; Notice of Filing

July 25, 2008.

Take notice that on June 19, 2008, SESCO Enterprises, LLC and SESCO Enterprises Canada, Ltd tendered for filing for Determination of Category 1 Status Under Order No. 697 and Modification of Market-Based Rate Tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies

of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 1, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–17627 Filed 7–31–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER08–1250–000]

Haverhill North Coke Company; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

July 25, 2008.

This is a supplemental notice in the above-referenced proceeding of Haverhill North Coke Company's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 14, 2008.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list.

They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–17631 Filed 7–31–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER08–933–000]

Lempster Wind, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

July 25, 2008.

This is a supplemental notice in the above-referenced proceeding of Lempster Wind, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 14, 2008.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list.

They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–17634 Filed 7–31–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER08–934–000]

Locust Ridge II, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

July 25, 2008.

This is a supplemental notice in the above-referenced proceeding of Locust Ridge, LLC's application for market-based rate authority, with an

accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 14, 2008.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list.

They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–17635 Filed 7–31–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER08–1240–000]

MH Partners LP; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

July 25, 2008.

This is a supplemental notice in the above-referenced proceeding of MH Partners LP's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 14, 2008.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list.

They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–17630 Filed 7–31–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER08–1261–000]

Naturener Glacial Wind Energy 1, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

July 25, 2008.

This is a supplemental notice in the above-referenced proceeding of Naturener Glacial Wind Energy 1, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is August 14, 2008.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission,

888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list.

They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–17633 Filed 7–31–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER08–1260–000]

Naturener Montana Wind Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

July 25, 2008.

This is a supplemental notice in the above-referenced proceeding of Naturener Montana Wind Energy, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is August 14, 2008.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list.

They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed 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.

Kimberly D. Bose,

Secretary

[FR Doc. E8–17632 Filed 7–31–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13193–000]

FFP Missouri 12, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

July 25, 2008.

On April 22, 2008, FFP Missouri 12, LLC (Free Flow Power Corporation) filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Missouri River 12 Project, to be located in the Missouri River in Warren and Franklin Counties, Missouri.

The proposed Missouri River 12 project consists of: (1) 2,520 proposed 20-kilowatt Free Flow generating units having a total installed capacity of 50.4-megawatts, (2) a mooring system, (3) a proposed transmission line, and (4) appurtenant facilities. The proposed Missouri River Project 12 would have an average annual generation of 220,752-gigawatt-hours, which would be sold to a local utility.

Applicant Contact: Mr. Daniel R. Irwin, Free Flow Power Corporation, 33 Commercial Street, Gloucester, MA 01930, phone: 978/232–3536.

FERC Contact: Patricia W. Gillis (202) 502–8735.

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–13193) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–17637 Filed 7–31–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13194–000]

FFP Missouri 13, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

July 25, 2008.

On April 22, 2008, FFP Missouri 13, LLC (Free Flow Power Corporation) filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Missouri River 13 Project, to be located in the Missouri River in Gasconade and Montgomery Counties, Missouri.

The proposed Missouri River 13 project consists of: (1) 3,960 proposed 20-kilowatt Free Flow generating units having a total installed capacity of 79.2-megawatts, (2) a mooring system, (3) a proposed transmission line, and (4) appurtenant facilities. The proposed Missouri River Project 13 would have an average annual generation of 346,896-gigawatt-hours, which would be sold to a local utility.

Applicant Contact: Mr. Daniel R. Irwin, Free Flow Power Corporation, 33 Commercial Street, Gloucester, MA 01930, phone: 978/232–3536.

FERC Contact: Patricia W. Gillis (202) 502–8735.

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 Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–13194) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–17638 Filed 7–31–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13195–000]

FFP Missouri 14, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

July 25, 2008.

On April 22, 2008, FFP Missouri 14, LLC (Free Flow Power Corporation) filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Missouri River 14 Project, to be located in the Missouri River in Osage and Callaway Counties, Missouri.

The proposed Missouri River 14 project consists of: (1) 1,800 proposed 20-kilowatt Free Flow generating units having a total installed capacity of 36-megawatts, (2) a mooring system, (3) a proposed transmission line, and (4) appurtenant facilities. The proposed Missouri River Project 14 would have an average annual generation of 157,680-gigawatt-hours, which would be sold to a local utility.

Applicant Contact: Mr. Daniel R. Irwin, Free Flow Power Corporation, 33 Commercial Street, Gloucester, MA 01930, phone: 978/232–3536.

FERC Contact: Patricia W. Gillis, (202) 502–8735.

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–13195) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–17639 Filed 7–31–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13196–000]

FFP Missouri 15, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

July 25, 2008.

On April 22, 2008, FFP Missouri 15, LLC (Free Flow Power Corporation) filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Missouri River 15 Project, to be located in the Missouri River in Cole and Callaway Counties, Missouri.

The proposed Missouri River 15 project consists of: (1) 5,100 proposed 20-kilowatt Free Flow generating units having a total installed capacity of 102-megawatts, (2) a mooring system, (3) a proposed transmission line, and (4) appurtenant facilities. The proposed Missouri River Project 15 would have an average annual generation of 446,760-gigawatt-hours, which would be sold to a local utility.

Applicant Contact: Mr. Daniel R. Irwin, Free Flow Power Corporation, 33 Commercial Street, Gloucester, MA 01930, phone: 978/232–3536.

FERC Contact: Patricia W. Gillis (202) 502–8735.

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 Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13196) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–17640 Filed 7–31–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–442–000]

CenterPoint Energy Gas Transmission Company; Notice of Request Under Blanket Authorization

July 25, 2008.

Take notice that on July 18, 2008, CenterPoint Energy Gas Transmission Company (CEGT), 1111 Louisiana Street, Houston, Texas 77002–5231, filed in Docket No. CP08–442–000, a prior notice request pursuant to sections 157.205 and 157.216 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act for authorization to abandon, by sale and transfer, certain facilities in Oklahoma, 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, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Specifically, CEGT proposes to abandon, by transfer and sale at net book value of $544,481 as of June 30, 2008, to CenterPoint Energy Resources Corp., d/b/a Oklahoma Gas, an affiliated local distribution company, a segment of Line 11 and entire Line 11–D. CEGT states that Line 11 consists of 8,126 feet of 4½ inch steel pipe with two domestic taps and Line 11–D consists of 16,613 feet of 2⅜ inch steel diameter pipe with nine domestic taps, both located in Comanche County, Oklahoma. CEGT asserts that Oklahoma Gas will incorporate these lines as part of its existing low-pressure distribution system in Oklahoma.

Any questions regarding the application should be directed to Lawrence O. Thomas, Director-Rates & Regulatory, CenterPoint Energy Gas Transmission Company, P.O. Box 21734, Shreveport, Louisiana 71151, or call (318) 429–2804.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–17641 Filed 7–31–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket ID Number EPA–HQ–OECA–2008–0230; FRL–8699–6]

Clean Water Act Class II: Proposed Administrative Settlement, Penalty Assessment and Opportunity To Comment Regarding Windstream Corporation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has entered into a Consent Agreement with Windstream Corporation (Windstream) to resolve violations of the Clean Water Act (CWA) and the Emergency Planning and Community Right-to-Know Act (EPCRA), and their implementing regulations.

The Administrator is hereby providing public notice of this Consent Agreement and proposed Final Order, and providing an opportunity for interested persons to comment on this Consent Agreement, in accordance with CWA Section 311(b)(6)(C), 33 U.S.C. 1321(b)(6)(c).

DATES: Comments are due on or before September 2, 2008.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Section I.B of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Beth Cavalier, Special Litigation and Projects Division (2248–A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 564–3271; fax: (202) 564–0010; e-mail: *cavalier.beth@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. EPA–HQ–OECA–2008–0230.

The official public docket consists of the Consent Agreement, proposed Final Order, and any public comments received. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Enforcement and Compliance Docket Information Center (ECDIC) in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ECDIC is (202) 566–1752. A reasonable fee may be charged by EPA for copying docket materials.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''Federal Register'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents

of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Section I.A.1.

For public commentors, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. *Electronically*. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD–ROM you submit, and in any cover letter accompanying the disk or CD–ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket* and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in Docket ID No. EPA–HQ–OECA–2008–0230. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by electronic mail (e-mail) to *docket.oeca@epa.gov*, Attention Docket ID No. EPA–HQ–OECA–2008–0230. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD–ROM*. You may submit comments on a disk or CD–ROM that you mail to the mailing address identified in Section I.A.1. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail*. Send your comments to: Enforcement and Compliance Docket Information Center, Environmental Protection Agency, Mailcode: 2201T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. EPA–HQ–OECA–2008–0230.

3. *By Hand Delivery or Courier*. Deliver your comments to the address provided in Section I.A.1., Attention Docket ID No. EPA–HQ–OECA–2008–0230. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Section I.A.1.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD–ROM, 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 CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2.

In addition to one complete version of the comment that includes any 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 and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD–ROM, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

II. Background

Windstream Corporation is a telecommunications company providing voice, broadband, and entertainment services to customers in sixteen (16) states, and is incorporated in the State of Delaware. Windstream disclosed,

pursuant to EPA's policy entitled ''Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations'' (Audit Policy), 65 FR 19618 (April 11, 2000), violations of the CWA and EPCRA, and their implementing regulations.

Specifically, Windstream disclosed that it failed to prepare and implement a Spill Prevention, Control, and Countermeasure (SPCC) Plan for its Concord, NC facility in violation of CWA Section 311(j), 33 U.S.C. 1321(j), and 40 CFR part 112. EPA, as authorized by CWA Section 311(b)(6), 33 U.S.C. 1321(b)(6), has assessed a civil penalty for this violation.

In addition, Respondent disclosed that it had failed to comply with EPCRA Section 312, 42 U.S.C. 11022, and the regulations found at 40 CFR 370.25, when it failed to prepare and submit emergency and chemical inventory forms to the Local Emergency Planning Commission (LEPC), the State Emergency Response Committee (SERC), and the fire department with jurisdiction over each facility, at the following facilities: Brownfield, TX; Dalhart, TX; Dimmitt, TX; Dumas, TX; Hubbard, TX; Levelland, TX; Glen Rose, TX; Littlefield, TX; Crockett, TX; DeKalb, TX; Spearman, TX; Seymour, TX; Pecos, TX; Newton, TX; Lubbock, TX; Trinity, TX; Texarkana, TX; New Boston, TX; Memphis, TX; Fairfield, TX; Crosbyton, TX; Higgins, TX; Follett, TX; Darrouzett, TX; Panhandle, TX; Lamesa, TX; Claude, TX; MoBeetie, TX; Burkeville, TX; Baird, TX; Hart, TX; Orla, TX; Perryton, TX; Cuba, NM; Ruidoso, NM; White City, NM; Hobbs, NM; Espanola, NM; Checotah, OK; Wagoner, OK; Barnsdall, OK; Lindsay, OK; Albemarle, NC; Charlotte, NC; Concord, NC; and Harrisburg, NC. EPA, as authorized by EPCRA Section 325, 42 U.S.C. 11045, has assessed a civil penalty for these violations.

EPA determined that Respondent met the criteria set out in the Audit Policy for a 100% waiver of the gravity component of the penalty for the CWA and EPCRA violations. Therefore, EPA proposes to waive the gravity-based penalty of $414,290 and proposes a settlement penalty amount of $11,333. This is the amount of the economic benefit gained by Respondent, attributable to its delayed compliance with the CWA and EPCRA regulations. Of this amount, $861 is attributable to the CWA–SPCC violation, and $10,472 is attributable to the EPCRA violations.

The total civil penalty assessed for settlement purposes is eleven thousand three hundred and thirty-three dollars ($11,333). Respondent has agreed to pay this amount. EPA and Respondent negotiated and signed an administrative Consent Agreement, following the Consolidated Rules of Practice, 40 CFR 22.13(b), on June 27, 2008 (*In Re: Windstream Corporation*, Docket Nos. CWA–HQ–2008–8001, EPCRA–HQ–2008–8001). This Consent Agreement is subject to public notice and comment under CWA Section 311(b)(6), 33 U.S.C. 1321(b)(6).

Under CWA Section 311(b)(6)(A), 33 U.S.C. 1321(b)(6)(A), any owner, operator, or person in charge of a vessel, onshore facility, or offshore facility from which oil is discharged in violation of CWA Section 311(b)(3), 33 U.S.C. 1321(b)(3), or who fails or refuses to comply with any regulations that have been issued under CWA Section 311(j), 33 U.S.C. 1321(j), may be assessed an administrative civil penalty of up to $157,500 by EPA. Class II proceedings under CWA Section 311(b)(6), 33 U.S.C. 1321(b)(6), are conducted in accordance with 40 CFR Part 22.

Under EPCRA Section 325, 42 U.S.C. 11045, the Administrator may issue an administrative order assessing a civil penalty against any person who has violated applicable emergency planning or right-to-know requirements, or any other requirement of EPCRA. Proceedings under EPCRA Section 325, 42 U.S.C. 11045, are conducted in accordance with 40 CFR Part 22.

The procedures by which the public may comment on a proposed Class II penalty order, or participate in a CWA Class II penalty proceeding, are set forth in 40 CFR 22.45. The deadline for submitting public comment on this Consent Agreement is September 2, 2008. All comments will be transferred to the Environmental Appeals Board (EAB) of EPA for consideration. The powers and duties of the EAB are outlined in 40 CFR 22.4(a).

Pursuant to CWA Section 311(b)(6)(C), 33 U.S.C. 1321(b)(6)(C), EPA will not issue an order in this proceeding prior to the close of the public comment period.

Dated: July 17, 2008.

Bernadette Rappold,

Director, Special Litigation and Projects Division, Office of Enforcement and Compliance Assurance.

[FR Doc. E8–17724 Filed 7–31–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8584–3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7146.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 6, 2008 (73 FR 19833).

Draft EISs

EIS No. 20080197, ERP No. D–BLM–K60041–NV, Lincoln County Land Act (LCLA) Groundwater Development and Utility Right-of-Way Project, Implementation, To Grant a Right-of-Way Permit for Groundwater Development and Utility Facilities, Lincoln County, NV.

Summary: EPA expressed environmental concerns about the long-term availability of the water supply, conservation and water use efficiency, and indirect and cumulative impacts, and recommended continued collaboration through a regional groundwater framework to ensure efficient long-term sustainable use of the deep carbonate-rock aquifer, and evaluation and commitment to specific climate change adaptation measures and back-up water supplies. Rating EC2.

EIS No. 20080200, ERP No. D–AFS–J65515–UT, Dixie National Forest Motorized Travel Plan, Implementation, Dixie National and the Teasdale portion of the Fremont River Ranger District on the Fishlake National Forest, Garfield, Iron, Kane, Piute, Washington and Wayne Counties, UT.

Summary: EPA does not object to the proposed action. Rating LO.

EIS No. 20080209, ERP No. D–AFS–J65516–WY, Inyan Kara Analysis Area Vegetation Management, Proposes to Implement Best Management Livestock Grazing Practices and Activities Associated with Adaptive Management and Monitoring Strategies, Douglas Ranger District, Medicine Bow Routt National Forest and Thunder Basin National Grassland, Niobrara and Weston Counties, WY.

Summary: EPA expressed environmental concerns about potential water quality impacts to riparian/stream systems due to past grazing activities. EPA supports adaptive management practices proposed by the Forest Service for improve existing resource conditions impacted by grazing and long-term drought. EPA requested that the final EIS include a drought management plan and baseline data for monitoring and protecting water quality. Rating EC2.

EIS No. 20080219, ERP No. D–NOA–E39073–00, Programmatic—Coral Restoration in the Florida Keys and Flower Garden Banks National Marine Sanctuaries, Implementation, FL, TX, and LA.

Summary: EPA does not object to the proposed action, but requested additional data to clarify timeframes of coral growth and the level of effort to conduct the restoration projects. Rating LO.

Dated: July 29, 2008.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E8–17718 Filed 7–31–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8584–2]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/*.

Weekly receipt of Environmental Impact Statements

Filed 07/21/2008 Through 07/25/2008.

Pursuant to 40 CFR 1506.9.

EIS No. 20080285, Final EIS, NPS, MT, Avalanche Hazard Reduction Project, Issuance of Special Use Permit for the Use of Explosives in the Park, Burlington Northern Santa Fe Railway, Glacier National Park, Flathead National Forest, Flathead and Glacier Counties, MT, Wait Period Ends: 09/02/2008, Contact: Chas Cartwright 406–888–7898.

EIS No. 20080286, Final EIS, AFS, UT, Pockets Resource Management Project, Proposes to Salvage Dead and Dying Spruce/Fir, Regenerate Aspen, and Manage Travel, Escalate Ranger District, Dixie National Forest, Garfield County, UT, Wait Period Ends: 09/02/2008, Contact: Robert G. MacWhorter 435–826–5400.

EIS No. 20080287, Final EIS, BLM, UT, Moab Field Office Planning Area, Resource Management Plan, Implementation, Grand and San Juan Counties, UT, Wait Period Ends: 09/02/2008, Contact: Brent Northrup 435–259–2100.

EIS No. 20080288, Draft Supplement, NOA, 00, Amendment 16 to the Fishery Management Plan for the Snapper Grouper Fishery, Additional Information to Analyze Four New Management Measures Alternatives for Gag and Vermillion Snapper, Implementation, South Atlantic Region, Comment Period Ends: 09/15/2008, Contact: Dr. Roy E. Crabtree 727–824–5305.

EIS No. 20080289, Final EIS, FTA, TX, Northwest Corridor Light Rail Transit Line (LRT) to Irving/Dallas/Fort Worth International Airport, Construction, Dallas County, TX, Wait Period Ends: 09/02/2008, Contact: Elizabeth Zekasko 202–366–0244.

EIS No. 20080290, Draft EIS, STB, 00, Elgin, Joliet & Eastern Railroad (Finance Docket No. 35087) Proposed Acquisition by Canadian National (CN) Railway and Grand Trunk Corporation to connect all Five of CN's Rail lines, Chicago, Illinois and Gary, Indiana, Comment Period Ends: 09/30/2008, Contact: Phillis Johnson-Ball 202–245–0304.

EIS No. 20080291, Draft EIS, AFS, CO, Colorado Roadless Areas Rulemaking, Proposes to Promulgate a State-Specific Rule to Manage Roadless Values and Characteristics, Colorado Forests with Roadless Areas include: Arapaho and Roosevelt: Grand Mesa, Uncompahgre, and Gunnison; Manti-La Sal (portion in Colorado); Pike and San Isabel; Rio Grande; Routt: San Juan; and White River National Forests, CO, Comment Period Ends: 10/23/2008, Contact: Kathy Kurtz 303–275–5083.

EIS No. 20080292, Draft EIS, IBR, CA, Millerton Lake Resource Management Plan (RMP) and General Plan, Implementation, Fresno and Madera Counties, CA, Comment Period Ends: 09/15/2008, Contact: Robert Epperson 559–269–4518.

EIS No. 20080293, Draft EIS, IBR, CA, Cachuma Lake Resource Management Plan, Implementation, Cachuma Lake, Santa Barbara County, CA, Comment Period Ends: 09/15/2008, Contact: Sharon McHale 916–989–7172.

EIS No. 20080294, Final EIS, FHW, VA, U.S. 460 Location Study Project, Transportation Improvements from I–295 in Prince George County to the Interchange of Route 460 and 58 along the Suffolk Bypass, Funding, U.S. Army COE Section 10 and 404 Permits, Prince George, Sussex, Surry, Southampton and Isle of Wight Counties, VA, Wait Period Ends: 09/02/2008, Contact: Kenneth Myers 804–775–3353.

Amended Notices

EIS No. 20080227, Second Draft Supplement, TPT, CA, Presidio Trust Management Plan (PTMP), Updated Information on the Concept for the 120-Acre Main Post District, Area B of the Presidio of San Francisco, Implementation, City and County of San Francisco, CA, Comment Period Ends: 09/19/2008, Contact: John G. Pelka 415–561–5300.

Revision to FR Notice Published: Extending Comment Period from 07/31/2008 to 09/19/2008.

Dated: July 29, 2008.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E8–17722 Filed 7–31–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2007–0291; FRL–8700–2]

Interim Approach to Applying the Audit Policy to New Owners

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for comment.

SUMMARY: The Environmental Protection Agency (''EPA'' or ''the Agency'') announces and requests comment on its Interim Approach to Applying the Audit Policy to New Owners (''Interim Approach''). (EPA's April 11, 2000 policy on ''Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations,'' is commonly referred to as the ''Audit Policy'' (65 FR 19618).) This Interim Approach offers a detailed description of how EPA will apply its Audit Policy to new owners of regulated facilities. Under the Interim Approach, EPA will offer certain incentives specifically tailored to new owners that want to make a ''clean start'' at their newly acquired facilities by addressing environmental noncompliance that began prior to acquisition. This Interim Approach is designed to motivate new owners to audit newly acquired facilities and use the Audit Policy to disclose, correct, and prevent the recurrence of violations. It is also designed to encourage self-disclosures of violations that will, once corrected, yield significant pollutant reductions and benefits to the environment. The incentives tailored for new owners include penalty mitigation

beyond what is provided in the Audit Policy, as well as the modification of certain Audit Policy conditions. Through applying a clear, transparent, and easily administered Interim Approach to resolving disclosures from new owners, the Agency seeks to use the Audit Policy to leverage its ability to make effective use of scarce government resources. If procedural and transaction costs can be minimized for regulators and self-disclosing new owners, EPA anticipates that the opportunity to work with new owners as they make clean starts at their new facilities can help secure higher quality environmental improvements more quickly and effectively than might otherwise occur.

On May 14, 2007, EPA published a **Federal Register** Notice entitled ''Enhancing Environmental Outcomes From Audit Policy Disclosures Through Tailored Incentives for New Owners'' (72 FR 27116) (''First Notice'') seeking public comment on whether and to what extent the Agency should consider offering tailored incentives to encourage new owners of regulated entities to discover, disclose, correct, and prevent the recurrence of environmental violations pursuant to the Audit Policy. The Agency received public comment supportive of the idea of offering tailored incentives to new owners, and decided to develop an approach to applying the Audit Policy to new owners. The Agency believes the most efficient way to effectively test this strategy, and learn from practical experience, is to implement it on an interim basis. Accordingly, the Agency has decided to begin applying the Interim Approach, effective upon publication of this Notice. EPA is concurrently seeking public comment on the Interim Approach for a period of 90 days. EPA will be reviewing public comment as it is received and will continue its dialogue with stakeholders on whether refinements to the Interim Approach are needed. In addition, the Agency will place into the public docket copies of agreements resolving violations disclosed by new owners under the Interim Approach. In any event, EPA intends to assess the effectiveness of the Interim Approach on a continual basis. Based on public comment and after the Agency has gained sufficient experience in implementing the Interim Approach, EPA will decide to finalize, revise or discontinue these tailored incentives for new owners.

DATES: The Interim Approach is effective upon publication of this Notice. EPA urges interested parties to comment on the Interim Approach in writing. Comments must be received by EPA no later than October 30, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OECA–2007–0291, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: docket.oeca@epa.gov*, Attention Docket ID No. EPA–HQ–OECA–2007–0291.
- *Fax:* (202) 566–9744, Attention Docket ID No. EPA–HQ–OECA–2007–0291.
- *Mail:* Enforcement and Compliance Docket Information Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. EPA–HQ–OECA–2007–0291.
- *Hand Delivery:* Enforcement and Compliance Docket Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1927. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OECA–2007–0291. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov*. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the Enforcement and Compliance Docket Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1927.

FOR FURTHER INFORMATION CONTACT: For further information, contact Caroline Makepeace of EPA's Office of Enforcement and Compliance Assurance, Office of Civil Enforcement, Special Litigation and Projects Division at *makepeace.caroline@epa.gov* or (202) 564–6012.

SUPPLEMENTARY INFORMATION:

I. Background and Goals

A. Background on EPA's Exploration of Tailored Incentives for New Owners

1. Overview of the Audit Policy

On April 11, 2000, EPA issued its revised final Audit Policy, or ''2000 Audit Policy'' (65 FR 19618). The purpose of the Audit Policy is to enhance protection of human health and the environment by encouraging regulated entities to voluntarily discover, promptly disclose, expeditiously correct and prevent the recurrence of violations of federal environmental law. Benefits available to

entities that make disclosures under the terms of the Audit Policy include reductions in and, in some cases, the elimination of civil penalties and an EPA determination not to recommend criminal prosecution of disclosing entities (ultimate prosecutorial discretion resides with the U.S. Department of Justice).

The Audit Policy contains nine conditions, and entities that meet all of them are eligible for 100 percent mitigation of any gravity-based civil penalties that otherwise could be assessed in settlement of the disclosed violations. (''Gravity-based'' penalty refers to that portion of the civil penalty over and above the portion that represents the entity's economic gain from noncompliance, known as the ''economic benefit.'') Regulated entities that do not meet the first condition—systematic discovery of violations—but meet the other eight conditions are eligible for 75 percent mitigation of any gravity-based penalties. The Audit Policy includes important safeguards to deter violations and protect the environment. For example, the Audit Policy requires entities to act to prevent recurrence of violations and to remedy any environmental harm that may have occurred. Repeat violations, those that resulted in serious actual harm to the environment, and those that may have presented an imminent and substantial endangerment are not eligible for relief under the Audit Policy. Entities and individuals also remain criminally liable for violations that result from conscious disregard of, or willful blindness to, their obligations under the law.

Once a regulated entity discloses violations in writing to EPA, EPA evaluates the violations against the criteria set forth in the Audit Policy, and determines the appropriate enforcement response. For cases involving no assessment of penalties, the enforcement response for voluntary disclosures is usually a Notice of Determination (''NOD''). Audit Policy disclosures may also be resolved through an administrative consent agreement and final order, or a civil judicial consent decree. If the disclosure does not meet the conditions of the applicable policy, the matter is handled under the appropriate media-specific penalty policies, which often include penalty mitigation for voluntary disclosures.

The Audit Policy and related documents are available on the Internet at *http://www.epa.gov/compliance/incentives/auditing/auditpolicy.html*. Additional guidance for implementing the Policy in the context of criminal violations can be found at *http://www.epa.gov/compliance/resources/policies/incentives/auditing/auditcrimvio-mem.PDF*. The Small Business Compliance Policy (65 FR 19630), published April 11, 2000, is an additional voluntary disclosure policy that provides incentives for small businesses (of 100 or fewer employees) that voluntarily discover, promptly disclose and expeditiously correct environmental violations. More information on the Small Business Compliance Policy is available at *http://www.epa.gov/compliance/incentives/smallbusiness/index.html*.

2. How the Audit Policy Has Been Applied to New Owners

Historically, EPA has recognized that additional flexibility in Audit Policy implementation may be appropriate for new owners. The 2000 Audit Policy addressed new owners and repeat violations, focusing on pre-acquisition violations at the newly acquired facility: ''[i]f a facility has been newly acquired, the existence of a violation prior to acquisition does not trigger the repeat violations exclusion'' as to the new owner (65 FR at 19623). In addition, the Audit Policy states that, in the acquisitions context, EPA will consider extending the prompt disclosure period on a case-by-case basis. It also states that the 21-day disclosure period will begin on the date of discovery by the acquiring entity, but in no case will the period begin earlier than the date of acquisition. *See* 65 FR at 19622.

EPA's primary interest is to encourage owners of newly acquired facilities to undertake a comprehensive examination of and improvements to a facility's environmental compliance and its compliance management systems. Notwithstanding a new owner's history of violations at its other facilities, if its efforts to examine and improve upon an acquired facility's environmental operations are thorough and are likely to result in improved compliance, EPA's intent is to encourage such examinations.

On April 30, 2007, EPA issued the ''Audit Policy: Frequently Asked Questions (2007)'' document (''Frequently Asked Questions'') which recognizes that new owners are uniquely situated to examine and improve performance at newly acquired facilities.[1] Specifically, EPA's Answer to Question 2 of the 2007 Frequently Asked Questions document provides that:

- For new owners that in good faith undertake a compliance evaluation and inform the Agency of such actions, either by disclosure in writing or entry into an Audit Agreement, prior to submission of its first annual Title V certification, the violations disclosed would be considered voluntarily discovered for purposes of the Audit Policy.

Generally, Clean Air Act (CAA) violations discovered during activities supporting Title V certification requirements are not eligible for penalty mitigation under the Policy. Condition 2 of the Audit Policy requires that disclosed violations must not be discovered through a legally mandated monitoring or sampling requirement prescribed by statute or regulation; therefore, examination of CAA compliance accompanying a Title V annual certification is not voluntary.[2] However, EPA wants to encourage new owners to examine facility operations to determine compliance, correct violations, and upgrade deficient equipment and practices. Thus, for new owners that in good faith undertake such efforts and inform the Agency of such actions, either by disclosure in writing or entry into an audit agreement with EPA prior to submission of the facility's first annual Title V certification under new ownership, the violations disclosed would be considered voluntarily discovered for purposes of the Audit Policy.

EPA's Answer to Question 5 of the 2007 Frequently Asked Questions document also provides that:

- New owners may be eligible for penalty mitigation under the Audit Policy for violations at newly acquired facilities irrespective of the disclosing entity's compliance history at other facilities.

3. First **Federal Register** Notice and Public Comment Process on This Topic

EPA's First Notice was issued to solicit public input and information to be used in helping EPA better understand and formulate decisions about issues associated with offering

[1] The 2007 Frequently Asked Questions document can be found on the Internet at *http://www.epa.gov/compliance/incentives/auditing/2007-faqs.pdf*.

[2] Under the regulations governing CAA Title V permit applications and annual compliance certifications, any application, form, report or compliance certification is required to contain a certification by a responsible official of the truth, accuracy and completeness of information contained in such documents. The regulations further provide that ''[t]his certification and any other certification required under this part shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.'' 40 CFR 70.5(d).

tailored Audit Policy incentives to new owners. The Agency identified for comment a series of questions: (1) Should EPA offer tailored incentives to encourage new owners of regulated entities to discover, disclose, correct, and prevent environmental violations; (2) how should the Agency determine who is a new owner; (3) what incentives should the Agency consider offering in order to encourage new owners to self-audit and disclose; and (4) if such tailored incentives are offered, what measures should the Agency use in determining whether and to what extent self-audits by and disclosures from new owners are achieving significant improvements to the environment. Formal notice and comment on such policy matters are not required, but the Agency thought it prudent to invite public input, given the significant objectives EPA hopes to achieve and its desire to develop any incentives in a transparent and inclusive way.

EPA set up an electronic docket to facilitate the comment process for the First Notice and to make all the comments readily available to the public. The Agency also held two public meetings, in Washington, DC and San Francisco, California to facilitate oral comments. In addition, the day after each public meeting, the Agency invited a diverse and balanced group of industry, government, academic and interest group participants to smaller working sessions to discuss the same questions and issues that were posed in the First Notice. The working sessions were designed to give the Agency an opportunity to hear the views of a variety of individuals with different perspectives and experiences in a relatively informal and frank atmosphere, where remarks would be summarized but not attributed to individual participants. No consensus of opinion was sought or presented.

The written comments, transcripts of the public meetings and summaries of the comments made during the working sessions, as well as the Notice itself are available in the docket at *http://www.regulations.gov*, Docket ID No. EPA–HQ–OECA–2007–0291, or at the EPA Docket Center for which the physical address is listed above.

EPA received thoughtful and informative comments in response to the First Notice that helped the Agency as it considered whether to proceed in developing an approach to applying the Audit Policy to new owners, and how to structure such an approach to meet the goals described below in section I.B.

B. EPA's Development of an Interim Approach to Applying the Audit Policy in the New Owner Context

While EPA's Audit Policy program has been a successful effort to date, resolving disclosed violations involving over 3,500 entities and nearly 10,000 facilities, its potential as a tool to promote compliance, and in particular to produce significant pollutant reductions, has still not been fully realized. More than half of these Audit Policy disclosures have involved reporting violations which, while important for public information and safety purposes, may not produce significant reductions in pollutant emissions once the violations are corrected. Consistent with EPA's strategic plan, the Agency is seeking ways to increase the number of Audit Policy self-disclosures that have the potential to yield significant environmental benefits while effecting compliance with federal environmental requirements. In developing and implementing an approach to applying the Audit Policy to new owners, the Agency has two primary goals: (1) To secure the prompt correction of environmental violations, and (2) to achieve significant pollutant reductions and improvements to the environment as efficiently and expeditiously as possible.

Based in part on its recent experience with corporate auditing agreements and disclosures following acquisitions, the Agency believes that encouraging the new owners of regulated facilities to assess, disclose, and address environmental compliance at their newly acquired facilities presents a promising opportunity to achieve significant improvements to the environment in an expeditious and efficient way. EPA believes that when a new owner takes control of a facility, a host of factors may make it feasible and attractive for a new owner to focus on, and invest in, assessing and addressing environmental compliance issues. New owners may be well-situated to make an environmental ''clean start'' because they may already be auditing and assessing their new facilities, may have funding available to fix problems, and have an opportunity to manage and reduce risk by addressing and disclosing noncompliance.

Although EPA believes there are compelling reasons that new owners may be motivated to address noncompliance at their facilities, the Agency recognizes that there may be factors that new owners otherwise interested in using the Audit Policy perceive as disincentives. New owners may still have to pay substantial civil penalties under the Audit Policy, unless the economic benefit portion of the penalty is insignificant. Therefore, new owners may be reluctant to call EPA's attention to compliance issues at their newly acquired facilities when they themselves may not be fully aware of all the compliance issues presented. Particularly when many and/or complex facilities are involved, it may be difficult for new owners to have a reasonable idea of the full spectrum of compliance issues.

In addition, the Agency's experience with implementing the Audit Policy, especially with regard to corporate auditing agreements, suggests that one of the major reasons a company may be hesitant to self-audit and disclose under the Audit Policy is uncertainty about how the Agency will treat such self-disclosures. EPA is currently making an effort to provide greater overall certainty and consistency in the Audit Policy's implementation, and the recently-issued 2007 Frequently Asked Questions document should help provide greater certainty about how the Agency will apply the Audit Policy to a particular set of facts. Nevertheless, there is likely still some hesitation on the part of new owners to self-disclose violations, because of concerns about exactly how such disclosures will be handled by the Agency.

In the Interim Approach to applying the Audit Policy to new owners, described in this Notice, EPA is offering certain incentives to further encourage new owners to discover, disclose, correct and prevent the recurrence of violations that began prior to their acquisition. The incentives include penalty mitigation beyond what the Audit Policy generally provides and the clearly-stated modification of certain Audit Policy conditions. The Agency recognizes that there are equitable and policy arguments that a new owner should not be penalized for the full economic benefit relating to violations that arose before a facility was under its control, if that new owner is willing to promptly address such violations and make changes to ensure that the facility stays in compliance in the future. EPA anticipates that such incentives may make the difference in the willingness of new owners to come forward and commit to improving environmental compliance and reduce impacts on the environment.

Through implementing a clear, transparent, and easily administered approach to resolving disclosures from new owners, the Agency seeks to use the Audit Policy to leverage its ability to make effective use of scarce

government resources. If procedural and transaction costs can be minimized for regulators and self-disclosing new owners, EPA expects that the opportunity to work with new owners as they make clean starts at their new facilities can help secure higher quality environmental improvements more quickly and effectively than might otherwise occur.

The Agency intends to assess, on an ongoing basis, whether this is in fact a useful approach, yielding worthwhile results, and to consider whether such incentives produce any unintended adverse results, such as discouraging appropriate due diligence, timely compliance and/or the achievement and maintenance of a fair and level playing field. The approach will be implemented on an interim basis, with opportunity for changes or discontinuation, if warranted.

II. Interim Approach To Applying the Audit Policy To New Owners

To further the goals described above in section I.B., EPA has developed an Interim Approach to applying the Audit Policy to new owners, which is described in this section. Comments that the Agency received from the public in response to the First Notice on this topic were supportive of developing tailored Audit Policy incentives for new owners. Many comments did include caveats that any successful approach would need to be reasonable, simple, certain and clear, with a predictable and streamlined resolution process that still allowed flexibility, where appropriate. The Agency decided that the most efficient way to effectively test and refine the approach would be to implement it on an interim basis, and reap the benefit of practical experience. Accordingly, with this Notice, EPA is announcing that the Agency will implement the Interim Approach, effective immediately. In addition, EPA is concurrently seeking comment on the overall design and specific elements of the Interim Approach, as well as on any relevant issues or considerations which may not appear to be reflected. In some sections, certain issues are specifically raised for comment.

The Agency is now calling the initial phase of this project an Interim Approach rather than a pilot program. As EPA reviewed public comments, it appeared that certain misunderstandings arose from the concept of a ''program.'' Many commenters incorrectly perceived that the Agency was considering some sort of award or special status program which would bestow benefits on accepted members once they had ''applied'' and met eligibility requirements. To others, the term ''pilot'' appeared to imply, again incorrectly, that the use of this settlement approach would be a limited experiment, open only to a select group of new owners. Thus, EPA is now describing the first phase of applying of the Audit Policy to new owners as an Interim Approach. However defined, EPA intends to test the approach, and decide to continue, change, or abandon it, once the Agency has sufficient information and feedback to evaluate its effectiveness.

A. Definition of ''New Owner''

EPA has developed a set of criteria defining which entities are eligible to be considered new owners under the Interim Approach.

1. Interim Approach to Defining ''New Owner''

For purposes of the application of this tailored Interim Approach, an entity will be considered a ''new owner'' where it certifies to the following criteria:

a. Prior to the transaction, the new owner was not responsible for environmental compliance at the facility which is the subject of the disclosure, did not cause the violations being disclosed and could not have prevented their occurrence;

b. The violation which is the subject of the disclosure originated with the prior owner; and

c. Prior to the transaction, neither the buyer nor the seller had the largest ownership share of the other entity, and they did not have a common corporate parent.

2. Discussion of the ''New Owner'' Definition

In its First Notice, EPA sought comment on what should constitute a ''new owner'' for purposes of being offered tailored incentives under the Audit Policy. Commenters on the First Notice generally urged EPA to define a ''new owner'' broadly and to consider that a wide range of transactions might potentially produce a qualifying new owner. While most commenters recommended that the Agency make no distinctions between asset, stock, or merger transactions, most did not believe that either new entities created in corporate ''spin-offs'' or owners who had prior control over the facility should qualify as new owners.

The Agency intends that this Interim Approach apply only to new owners that did not control operations at the facility before the transaction, and only to violations that the new owner did not initiate. The first criterion of the definition of ''new owner'' asks the new owner to confirm the history of its relationship to the facility at issue, and to the violations being disclosed. EPA intends that this criterion be interpreted broadly, and in a common sense manner. For purposes of interpreting this criterion, the Agency's focus will be on ownership, or managerial, or operational control of the environmental operations at the facility. EPA will assume, for purposes of interpreting this criterion, that responsibility for environmental compliance or for any violations may be shared by corporate entities, controlling stockholders and operators and does not, for example, lie solely with individual employees or contractors at the facility.

The second criterion specifies that the ''new owner'' approach will only be applied to violations that did not originate with the new owner, as opposed to violations that are wholly new and began after the transaction. For example, if the new owner were to install a new oil storage tank and fail to provide for required secondary containment pursuant to 40 CFR 112, such action would trigger a wholly new violation. If the new owner disclosed this violation to EPA, the Agency would not apply the new owner approach to resolve the disclosure, but would treat it as a regular Audit Policy matter. New owners should bear in mind that even if such violations would not qualify for new owner penalty mitigation and benefits, they may nonetheless be eligible for Audit Policy consideration.

The third criterion serves several functions. Notwithstanding that a new owner might be willing and able to certify under the first criterion that it lacked actual control of operations at the facility, the Agency is proposing to exclude all new owners that had the largest pre-transaction ownership interest in the facility. Drawing this clear line at ''largest ownership share'' is intended to help ensure that the Agency is faced with fewer scenarios that raise questions about the extent of influence that the new and previous owners may have had over each other. Such questions might necessitate just the sort of analysis of corporate history and the terms of the transaction the Agency seeks to avoid because of efficiency and ambiguity concerns, and would raise transaction costs for all parties involved. This criterion excludes corporate spin-offs, because it excludes situations where a seller had the largest pre-transaction ownership share of the new owner entity, or was the new owner's corporate parent. The third criterion would allow participation by a

new owner which, prior to the transaction, was a silent or inactive partner in a joint venture, and then purchased the rest of the business and became the active owner, so long as its prior share was less than the largest, and the new owner can certify to the first criterion. It would also allow participation by a new owner which is the product of a merger, so long as neither party had previously held the greatest ownership share of the entity with which it merged. In the case of stock transactions, EPA intends that ''largest ownership share'' be interpreted to mean ownership of the largest number either of shares of stock or of voting rights. The third criterion also bars situations where the buyer and the seller had a common corporate parent. EPA assumes, for purposes of interpreting this criterion, that the corporate parent was in control of the prior owner, the ''new'' owner, and facility operations. Accordingly, where two companies have a common corporate parent and one subsidiary buys another, the acquiring entity is not sufficiently ''new'' to warrant this tailored application of the Audit Policy.

The Agency's intent is to minimize the resources necessary to apply the Audit Policy to new owners, and sought a simple and direct way to identify owners who want to make a clean start for their newly acquired operations. EPA considered and preliminarily concluded that the expenditure of resources necessary to research and analyze corporate transactions would be so great as to be unworkable, and would detract from efficient and effective resolution of violations. Thus, the Agency decided, as a policy matter, to rely generally on a self-certification from the new owner that it meets the criteria in section II.A.1. New owners should be aware that this certification will be required as a condition to resolving disclosed violations.

Most public comments about the certification issue advised that any required certifications not be so burdensome or complex as to chill new owners' interest in coming forward to the government. The eligibility criteria above are clear and straightforward, and the certification will simply be included along with the certifications made by the self-disclosing entity that all Audit Policy conditions, as applied to new owners, have been met. This approach is designed to be sufficiently uncomplicated and manageable, while seeking to ensure that only appropriate new owners benefit from the Agency's Interim Approach.

Commenters did suggest that the Agency might adopt a range of pre-existing methods for defining ''new owner,'' which included: (1) Using the ''no affiliation'' or ''bona fide prospective purchaser'' definitions found in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Small Business Liability Relief and Brownfields Revitalization Act (Pub. L. 107–118, 115 Stat. 2356, ''the Brownfields Amendments''); (2) requiring that the transaction occurred at ''at arms'' length;'' (3) adopting the change of ownership standards used for various federal environmental statutes; (4) relying on verification of ownership change by other regulatory agencies such as the Internal Revenue Service or Securities and Exchange Commission; (5) seeking assurance from the new owner that the transaction was not conducted to avoid penalties; (6) applying a ''management test;'' and (7) using the definitions with which the State of New Jersey implements its Industrial Site Recovery Act (N.J.S.A. 13:1K–6 and N.J.A.C. 7:26B).

Consideration of all of these approaches was instructive and useful in developing the criteria. However, for a variety of reasons, EPA found that none of them seemed appropriate to adopt wholesale in the new owners context. Given the different scenarios to which the suggested definitions were meant to apply, and EPA's desire to provide clarity and certainty to the public, the Agency decided to adopt a bright-line approach that is easily understood and applied by regulator and regulated alike.

The Agency hopes to be inclusive enough to maximize the number of facilities brought into compliance under the Audit Policy, and to ensure sufficient opportunities to fully test the Interim Approach. This definition of new owner is solely intended to apply to the application of the Audit Policy in the context of the Interim Approach. However, since the Agency is concerned that only appropriate new owners be eligible for the benefits of this approach, EPA specifically invites comment on the criteria for defining ''new ownership'' and whether the standard above is appropriate.

B. Timing for Availability of New Owner Incentives: For How Long Is an Owner ''New?''

1. Two Scenarios: Audit Agreement or Prompt Disclosure Within Nine Months of Closing

Under this Interim Approach, EPA will consider an owner ''new,'' and eligible for ''new owner'' treatment and benefits, for nine months after the date of the transaction closing. For nine months after the date of the transaction closing, the new owner can choose to make disclosures in two different contexts, which are described in detail in sections a. and b. below. The new owner can choose to enter into an audit agreement which will specify the facility or facilities to be audited, the scope of regulatory programs covered, dates for completion of audits and disclosure of violations. Alternatively, the new owner can choose to make disclosures individually, as violations are discovered, but each disclosure would have to be made promptly, within 21 days of discovery, or within 45 days of the closing, whichever is longer. *See* section II.E.3., ''Prompt Disclosure Condition,'' below. A new owner could also elect to make separate individual disclosures as described below in section II.B.1.b., and then decide to enter into an audit agreement and make further disclosures under that agreement. Of course, such an audit agreement would need to be entered into within nine months of the closing date for the transaction.

a. New Owner Enters into an Audit Agreement with EPA, within Nine Months of the Closing, and Receives ''New Owner'' Audit Policy Consideration, for Violations Disclosed Pursuant to that Agreement.

An audit agreement provides the opportunity to tailor timeframes and expectations to the new owner's unique situation. While the audit agreement approach is optional, it is highly recommended if the circumstances or complexity of facilities would likely require more time to audit or if a new owner expects to be making more than one disclosure to EPA. An audit agreement also reduces uncertainty, for both the new owner and EPA, as it specifies the timeframes for completing the audit, the facilities covered, the environmental requirements to be evaluated, and when the discovered violations will be disclosed.

Most importantly, and consistent with EPA practice, an audit agreement ''stops the clock'' with regard to the Prompt Disclosure condition, for violations discovered and disclosed pursuant to the agreement. An audit agreement also ''stops the clock'' with regard to the disclosure of violations that involve required monitoring, sampling or auditing, if the new owner enters into an audit agreement prior to the first instance when such action is required. *See* section II.E.2., ''Voluntary Discovery Condition,'' below.

''Entering into an audit agreement'' means that (1) the new owner has

committed in writing to audit a specific newly acquired facility or facilities, (2) the new owner has specified the scope of regulatory programs to be covered, dates for completion of the audits and dates for the disclosure of violations found, and (3) EPA has accepted those terms. EPA reserves its right to negotiate with the new owner about the scope, timing and sequence of the audits and disclosures. An audit agreement may be entered via a formal bilateral agreement or through an exchange of letters, provided the letters reflect a meeting of the minds and contain the appropriate information and commitments.

EPA does not intend that entering into an audit agreement be a lengthy or resource-intensive process for either new owners or the Agency. While the Agency will not disqualify a new owner whose audit agreement was not finalized before the end of the nine-month period because of delay on the part of EPA, new owners seeking an agreement should approach the Agency as early as possible, sufficient to allow a reasonable time to finalize an audit agreement with EPA.

b. New Owner Audit Policy Treatment Will Be Available for Violations Disclosed Within Nine Months After the Transaction Closing, as Long as the New Owner Discloses and Corrects Each Violation Promptly, and Meets All Other Conditions of the Audit Policy.

If a new owner prefers not to commit to performing audits and making disclosures within particular timeframes, it need not choose the audit agreement option, and can make individual disclosures as they are found, during the nine months following acquisition. This option may give a new owner more control over, and privacy concerning, its auditing, but to be eligible for new owner Audit Policy incentives, each violation found must be disclosed and corrected promptly, as described below in sections II.E.3. ''Prompt Disclosure Condition,'' and II.E.5. ''Correction and Remediation Condition.'' This option also requires that the new owner disclose any violations that involve required monitoring, sampling or auditing prior to the first instance when such action is required, in order to meet the Voluntary Discovery condition, and be eligible for Audit Policy consideration, as described in section II.E.2. ''Voluntary Discovery Condition.'' Of course, each disclosure would also have to meet the other six Audit Policy conditions, as applied to new owners.

2. Discussion of Timing

In the First Notice, EPA asked for comment on the issue of how long after acquisition an owner should be considered ''new'' for purposes of being eligible for new owner Audit Policy benefits. While some commenters suggested six months, the majority recommended one year or more, up to three years. Commenters described the challenges of making decisions about auditing and disclosing when, after an acquisition, there are many immediate and competing priorities.

The Agency recognizes that post-transaction demands may make it difficult to focus corporate attention on an immediate evaluation of environmental compliance issues, especially when the company would have to make a potentially expensive commitment to conduct audits and address noncompliance. The Agency believes that requiring such potentially high-stakes decision-making too quickly after the transaction, before the new owner has had the chance to operate its facility, would mean that fewer new owners would come forward, notwithstanding that, given more time for consideration and analysis of the situation, some would have indeed used the Audit Policy. Since EPA's intent is to encourage new owners to audit and disclose, and work with the Agency to correct problems, it seems advisable to provide sufficient time for decision-making.

However, the Agency is concerned that compliance may be unduly delayed if new owner benefits are offered for a year or more. The longer the Agency allows for the new owner to decide to make disclosures, or to enter into an audit agreement, the longer it may be before violations are identified, disclosed, and corrected. The potential for an audit agreement schedule to allow time frames for auditing and disclosures well beyond nine months, depending on the scope and nature of the overall auditing plan, could only exacerbate this potential issue. Notwithstanding that such extended timeframes may be approved only if the new owner is making a significant commitment to audit and fix many and/or complex facilities, there is potential for a significant passage of time before the disclosed violations are fully corrected. On the other hand, the longer a new owner delays coming forward, the more likely it is that certain violations which would have been eligible if disclosed earlier, because the new owner was coming forward before the first instance when ''otherwise required'' monitoring, sampling or auditing was due, could no longer be given Audit Policy consideration. *See* Section II.E.2. ''Voluntary Discovery Condition.'' In addition, as discussed below in Section II.D., the Agency would assess penalties for the economic benefit of costs saved from not having to operate or maintain controls and equipment, from the date of acquisition until the corrections are complete. Thus, the longer new owners take to undertake and complete an audit, and to disclose and correct violations found, the higher the penalty associated with avoided operation and maintenance costs would be.

Because of the above considerations, although the majority of commenters asked that new owners be considered ''new'' for at least a year after the transaction, EPA decided to give ''new owners'' a nine-month window of time to come forward to the Agency, and benefit from the new owner approach to penalty mitigation and application of the Audit Policy conditions. If a new owner makes disclosures after the nine-month window has passed, and has not entered into an audit agreement which extends the disclosure schedule, the disclosure may still be eligible for regular Audit Policy treatment, although the ''new owner'' benefits will not be available. EPA requests comment on whether more or less time would be advisable.

3. Flexibility Regarding Approach and Commitment to Auditing and Disclosures

On a related issue, commenters also asked for flexibility in the level of commitment to auditing and disclosure that a new owner need make when it comes forward to EPA, including when and how that commitment would be required. Some commenters suggested a tiering approach based on the level and complexity of the expected disclosures. Other commenters reflected the misapprehension that the Agency was envisioning a ''program'' to which a new owner would first need to apply, and be credentialed as a new owner, separate from any firm intention or commitment to actually audit or make disclosures. Since the Agency's focus is on the actual disclosure of violations and commitment to audit and correct violations, EPA believes that designing any precursory or ''place-holding'' steps, such as self-identifying as a new owner or merely indicating potential interest in auditing, would be unnecessary and a waste of effort for both EPA and the new owner.

C. Interim Approach to the Calculation and Assessment of Penalties

EPA's Interim Approach to implementation of the Audit Policy is designed to address the fact that new owners may still have to pay substantial civil penalties under the Audit Policy. Although 100 percent of the gravity portion of the penalty may be mitigated under the Audit Policy, the economic benefit portion may still be significant. The Agency recognizes that there are equitable and policy arguments that a new owner should not be penalized for the full economic benefit relating to violations that arose before a facility was under its control, if that new owner is willing to promptly address such violations and make changes to ensure that the facility stays in compliance in the future.

The uncertainties associated with the calculation and assessment of economic benefit may be factors that new owners otherwise interested in using the Audit Policy perceive as disincentives. In this section, EPA discusses an approach to calculating and assessing economic benefit in the new owner context.

1. Interim Approach to the Calculation and Assessment of Penalties

a. No penalties for economic benefit or gravity will be assessed against the new owner for the period before the date of acquisition.

b. Penalties for economic benefit associated with avoided operation and maintenance costs will be assessed against the new owner from the date of acquisition.

c. Penalties for economic benefit associated with delayed capital expenditures or with unfair competitive advantage will not be assessed against the new owner if violations are corrected in accordance with the Audit Policy (i.e., within 60 days of the date of discovery or another reasonable timeframe to which EPA has agreed).

2. Background of Economic Benefit Recapture

The imposition of civil penalties that recapture the economic benefit of noncompliance is a cornerstone of the EPA's civil penalty program. Benefit recapture has been a part of the Audit Policy since it was first issued on the premise that, even in self-audit and disclosure situations, penalties should not be reduced below the level necessary to recapture economic benefit when a violator has achieved an unfair economic advantage over its complying competitors. Accordingly, the Audit Policy provides that EPA reserves the right to assess any economic benefit which may have been realized as a result of noncompliance, even where the entity meets all Audit Policy conditions. The Audit Policy further provides that the Agency may waive the economic benefit component of the penalty where the Agency determines that the economic benefit is insignificant.

Violators obtain an economic benefit from violating the law by delaying compliance, avoiding compliance, or obtaining an unfair competitive advantage. When violators delay compliance, they have the use of the money that should have been spent on compliance to put into profit-making investments. Simply put, violators ''gain'' the returns on the amount of money that should have been invested in pollution control equipment. A typical example is where a factory delays installation of a required wastewater treatment facility. If the wastewater treatment facility costs $1,000,000 to install, and the violator waits three years past the required date to comply, the violator has saved over $200,000 by delaying compliance.[3]

A second type of economic benefit is derived when a violator avoids the annual costs it would have incurred had it complied in a timely manner. A typical example would be where a factory avoids the operation and maintenance costs for the above-mentioned wastewater treatment plant for the three years the polluter was out of compliance.

The third type of economic benefit is derived from the violator obtaining an unfair competitive advantage. Economic benefit associated with unfair competitive advantage might arise in a number of new owner scenarios. An example could involve a newly acquired facility with permit limits on its hours of operation and/or throughput. The new owner may discover that its facility is operating two hours beyond its permit limit each day in order to achieve more output. The funds made from that extra output would also constitute unfair competitive advantage economic benefit.

3. Discussion of Calculation and Assessment of Penalties

In the First Notice, the Agency asked for comment on the issue of how economic benefit should be calculated for disclosures by new owners. Many commenters addressed the issue of penalties to recapture economic benefit, and the issue of whether they should be eliminated or reduced in the new owner situation. Some commenters posited that the new owner does not actually receive any economic benefit from the previous owner's delayed or avoided compliance. On the other hand, it is possible that benefit does accrue; for example, it may be reflected in the purchase price. Notwithstanding arguments over whether economic benefit could inure to a new owner, it is difficult to accurately determine the amount of any such benefit. There are also equitable and policy arguments that a new owner should not be penalized for economic benefits relating to violations that originated when a facility was not in its control, and the new owner is willing to self-disclose and expeditiously correct the violations, and make changes to ensure future compliance. The Agency has speculated that one of the reasons that there have been relatively few Audit Policy disclosures of violations requiring the installation of significant environmental controls may relate to the potential size of penalties to recapture economic benefit. There may be significant economic benefit associated with corrections requiring expensive environmental controls, and companies may well consider it prudent to quietly fix their problems, without advising EPA (or the state) or seeking input from regulators. However, new owners investing tens of millions of dollars to correct violations that began prior to their ownership may want to involve EPA and receive a covenant not to sue[4] for those violations as part of a settlement. As a matter of course, EPA settlements typically release and covenant not to sue for the alleged violations resolved under the settlement agreement.

By providing certainty to the economic benefit assessment, EPA's intent is to increase the number of disclosures of significant violations, which will allow the Agency to participate in developing the approach to correcting such violations and

[3] The specific amount is $209,530 and was generated by the current version of the Agency's BEN computer model using the following assumptions: (1) The violator was in the average maximum tax bracket of 40%; (2) the violator's cost of money (i.e., the discount/compound rate) was the current BEN default value of 9.4%; and (3) inflation was based on the Plant Cost Index published in Chemical Engineering magazine. The BEN computer model can be found at *http://www.epa.gov/compliance/civil/econmodels/index.html.*

[4] A release and covenant not to sue is a legal mechanism under which EPA agrees to relinquish any potential claims to initiate a lawsuit against a party for any of the violations settled under the agreement, where that party complies with all of the terms of the settlement agreement.

securing appropriate environmental benefit. To further this goal, and because of the equities of the new owner situation, the Agency believes it is appropriate to modify its approach to calculating and assessing economic benefit with respect to disclosures from new owners.

One issue raised in the First Notice was whether EPA should take into account possible purchase price adjustments attributable to environmental compliance liabilities in designing the Agency's approach to new owners. Such consideration of adjustments to purchase price could potentially factor into the Agency's approach to calculating and assessing penalties in the new owner context. However, no commenters recommended that EPA try to incorporate a consideration of possible purchase price adjustments into the approach to new owners. Some commenters asserted that purchase price is often set at the outset of negotiations and that, especially in larger transactions, environmental compliance costs or savings are immaterial to the pricing of the transaction. Commenters pointed out that, even in the event that there were negotiations to adjust pricing, confidentiality issues may preclude its consideration by the Agency, and inquiries into if and how price may have been adjusted may chill participation in this Interim Approach. The Agency is also concerned that it would be prohibitively costly and difficult, if not impossible, for EPA to accurately and effectively analyze whether a price adjustment attributable to environmental issues occurred, or to conclusively determine how large it was. Incurring such time-intensive transaction costs, which would likely still yield inconclusive results, would detract from EPA's goals of leveraging its resources to secure higher quality environmental improvements more quickly and effectively than might otherwise occur. Accordingly, under this Interim Approach, EPA does not intend to consider adjustments to purchase price.

Commenters offered various suggestions for ways to approach the issue of penalties for economic benefit including: Waiving any pre-closing penalties; calculating penalties from the date the audit is complete; beginning the calculation of penalties only after a reasonable period for achieving compliance; calculating penalties starting a year after the end of the audit; and offsetting penalties by the cost of the audit, or by the cost of corrective measures. EPA has considered a variety of options and the Interim Approach focuses on two elements. First, for the reasons stated above, EPA will not seek penalties for economic benefit associated with capital expenditures, assuming the violations are promptly corrected. Second, because the new owner does clearly benefit from not having to operate and maintain controls and equipment before they are installed and functioning, the Agency will assess penalties for economic benefit associated with those savings, starting from the date the facility was acquired until the corrections are complete. EPA considers this a fair approach, and, because such penalties for avoided costs will rise the longer it takes to complete auditing, disclosures, and correction, one that may help motivate new owners to avoid delays. EPA does not intend to offset the cost of performing audits from any penalties for economic benefit since, especially for newly acquired facilities, auditing is generally a means by which to assess and assure compliance, and a cost of doing business in a responsible manner. In addition, there are situations where auditing may be required as a matter of compliance (e.g., Risk Management Plans under Clean Air Act 112(r)(7)), and where EPA considers it inappropriate to credit the cost of the audit against assessed penalties.

As is the case in the settlement of any violation, EPA may provide additional flexibility in assessing economic benefit on a case-by-case basis, if the Agency believes it is warranted and appropriate given the facts in a particular situation. As EPA has already stated in its Answer to Question 9 of the 2007 Frequently Asked Questions document, the Agency intends to consider all factors of settlement in assessing economic benefit in Audit Policy cases, and fairness is the central guiding principle underlying Agency decisions regarding the assessment of economic benefit.

D. Interim Approach to Application of Certain Audit Policy Conditions to New Owners

This section describes EPA's Interim Approach to applying the nine conditions of the Audit Policy to new owners. The Agency is proposing to apply five conditions differently in the new owner context (Condition D.1. Systematic Discovery; Condition D.2. Voluntary Discovery; Condition D.3. Prompt Disclosure; Condition D.8. Other Violations Excluded; and Condition D.9. Cooperation). For the sake of clarity and completeness, this section discusses the Agency's usual approach to applying the remaining Audit Policy conditions (Condition D.4. Independent Discovery; Condition D.5. Correction and Remediation; Condition D.6. Prevent Recurrence; and Condition D.7. No Repeat Violations), as described in the 2000 Audit Policy, the 2007 Frequently Asked Questions document and/or the Audit Policy Interpretive Guidance (''1997 Interpretive Guidance''),[5] although the Agency does not intend to alter the approach it has taken to their application or interpretation in the new owners context.

In order for the Agency to offer the incentives of this Interim Approach to applying the Audit Policy, the new owner would have to meet all nine of the following conditions, as tailored for new owners, as well as certify to the criteria of the new owner definition.

1. Systematic Discovery Condition (Condition D.1.)

The Systematic Discovery condition of the Audit Policy provides that violations be discovered through either an environmental audit or a compliance management system (CMS), if disclosing entities are to receive 100 percent mitigation of gravity-based penalties (if a violation is discovered outside such a review, and meets all the other Audit Policy conditions, 75 percent mitigation is available). The Audit Policy definition of ''Environmental Audit'' is a systematic, documented, periodic and objective review by regulated entities of facility operations and practices related to meeting environmental requirements. A ''Compliance Management System'' encompasses the regulated entity's documented systematic efforts, appropriate to the size and nature of its business to prevent, detect, and correct violations. For the full definitions of ''Environmental Audit'' and ''CMS,'' *see* section II.B. of the Audit Policy at 65 FR 19625.

a. Interim Approach to Systematic Discovery Condition in the New Owner Context

In the new owner context, EPA recognizes that pre-closing due diligence may meet all the elements of the Audit Policy definition of ''Environmental Audit,'' with the exception of the periodic review element. EPA recognizes that a new owner's pre-closing due diligence

[5] The ''Audit Policy Interpretive Guidance,'' issued on January 15, 1997, can be found at *http://www.epa.gov/compliance/resources/policies/civil/rcra/audpolintepgui-mem.pdf*. The 1997 Interpretive Guidance was developed to answer frequently asked questions regarding the implementation of the original Audit Policy issued in 1995 (60 FR 66,706 (December 22, 1995)). The 2007 Frequently Asked Questions document describes the differences between the original Audit Policy and the 2000 Policy and is intended to supplement the 1997 Interpretive Guidance.

review is by its nature a one-time event, and will waive the element of the Systematic Discovery condition that calls for that review to be ''periodic.'' In all other aspects, for new owner disclosures, EPA will apply the Systematic Discovery condition and standards in the usual manner.

b. Discussion of Systematic Discovery

In the First Notice, EPA asked for comment on whether the Agency should require that new owners have performed a certain level of pre-transaction due diligence to qualify for new owner benefits. Public comments on this issue reflected the fact that mergers and acquisitions vary widely in size, type and circumstance. Many commenters asserted that the level of environmental due diligence review a prospective buyer can perform is largely determined by the size, scope, speed and circumstances of negotiations, and can range from in-depth inquiries to scenarios where very little information can be gathered. Commenters indicated that a buyer's pre-purchase information on regulatory compliance is often imperfect and incomplete. Commenters asserted that any pre-condition from EPA that a certain level of due diligence must have been performed to make disclosures as a new owner would simply inhibit such disclosures from buyers, rather than encourage more due diligence. In addition, commenters posited that, aside from the fact that some buyers may simply be unable to perform the requisite due diligence, many would be concerned about how EPA might interpret the sufficiency of their efforts, and thus dissuaded from making disclosures. Some commenters recommended requiring the CERCLA ''all appropriate inquiry'' standard for prospective purchasers. However, that standard, with its emphasis on identifying contamination, was developed for a different situation.

EPA does not see a compelling reason to layer more or different review conditions onto the Audit Policy standards that currently exist. The Agency has concerns about the resources that would be needed to analyze and verify whether any new standard of review had been met. Moreover, EPA does not wish to deviate from the original intent of the Audit Policy and this condition. The only circumstance that warrants a different approach in the new owner context is that a prospective buyer would not have had an opportunity to perform periodic reviews of a facility it does not yet own. For that reason, EPA will not require that a new owner's pre-closing review meet the ''periodic'' element in order to be considered for full penalty mitigation.

2. Voluntary Discovery Condition (Condition D.2.)

The Voluntary Discovery condition of the Audit Policy provides that the disclosed violation must have been identified voluntarily, and not through a legally mandated monitoring, sampling, or auditing procedure that is required by statute, regulation, permit, judicial or administrative order, or consent agreement. The Audit Policy provides three examples of discovery which would not be ''voluntary'' such that they would be ineligible for penalty mitigation: emissions violations detected through a required emissions monitor; violations of a National Pollutant Discharge Elimination System (NPDES) discharge limit found through prescribed monitoring; and violations found through a compliance audit required to be performed by the terms of a consent order or settlement agreement.[6]

Generally, Clean Air Act violations discovered during activities supporting Title V certification requirements are not eligible for penalty mitigation under the Policy based on the Voluntary Discovery condition.[7] The Answer to Question 2 of EPA's 2007 Frequently Asked Questions document described a limited exception to this condition for new owners. Clean Air Act violations discovered at newly acquired facilities as part of the new owner's reexamination of facility compliance under Title V are considered voluntarily discovered for purposes of the Audit Policy, provided that the new owner either discloses the violation in writing or enters into an audit agreement with EPA before the new owner's first annual compliance certification under new ownership.

a. Interim Approach to Voluntary Discovery Condition

Under the Interim Approach, EPA is expanding its interpretation of the Voluntary Discovery condition of the Audit Policy in the new owner context, previously limited to compliance with Title V of the Clean Air Act, to allow consideration of all violations which would otherwise be ineligible for Audit Policy consideration under this condition. EPA wants to encourage new owners to broadly examine facility compliance and facility operations, correct violations found, and upgrade deficient equipment and practices, as soon as possible. Thus, for new owners that undertake such efforts and either disclose violations or enter into an audit agreement with an auditing and disclosure schedule, before the first instance when the monitoring, sampling or auditing is required, the disclosures would not be disqualified from Audit Policy consideration because of the Voluntary Discovery condition.

Providing this limited window for disclosure, prior to the first required instance of monitoring, sampling, or auditing, would provide a one-time ''catch-up'' period for new owners to use the Audit Policy for violations found through activities that are already required. For example, an entity could perform its Annual Comprehensive Site Compliance Evaluation required by the NPDES General Industrial Stormwater Permits and Stormwater Pollution Prevention Plans (SWPPP) prior to its due date, and discover and disclose violations for Audit Policy consideration. Of course, this eligibility for Audit Policy consideration would not affect the new owner's independent obligation to make appropriate and timely notifications and reports to regulatory authorities.

b. Discussion of Voluntary Discovery

In the First Notice, EPA asked for comment on whether the Agency should allow Audit Policy consideration of violations that might otherwise be excluded when the disclosures come from new owners. Most commenters supported the idea of allowing new owners to be eligible for penalty mitigation consideration for ''non-voluntarily'' discovered violations by expanding the Agency's interpretation of the Voluntary Discovery condition to other statutes and regulations, beyond the Clean Air Act Title V scenario described in EPA's 2007 Frequently Asked Questions document. While voluntary discovery is fundamental to EPA's Audit Policy, the approach to new owners is aimed at encouraging new owners' quick and thorough scrutiny of all operations and required practices, and providing this opportunity may make new owners proactive in checking for compliance issues as soon as possible. Thus, the Agency is willing to give new owners this limited ''catch-up'' period to monitor, sample and audit, and will allow otherwise ineligible violations to receive Audit Policy consideration, if the new owner (a) promptly discloses the violations or (b) enters into an audit

[6] The Audit Policy's Voluntary Discovery exclusion does not apply to violations that are discovered pursuant to audits that are conducted as part of a comprehensive environmental management system (EMS) required under a settlement agreement. *See* 65 FR at 19621 (April 11, 2000).

[7] *See* supra note 2.

agreement with an auditing and disclosure schedule before the date the monitoring, sampling, or auditing would be required.

3. Prompt Disclosure Condition (Condition D.3.)

The Audit Policy provides that the regulated entity fully must disclose the specific violation in writing to EPA within 21 days (or within such shorter time as may be required by law) after the entity discovered that the violation has, or may have, occurred. The Audit Policy defines discovery as the time at which there is an objectively reasonable basis for believing that a violation has, or may have, occurred.

The preamble of the Audit Policy states that, in the acquisitions context, EPA will consider extending the prompt disclosure period on a case-by-case basis. It also states that the 21-day disclosure period will begin on the date of discovery by the acquiring entity, but in no case will the period begin earlier than the date of acquisition. *See* 65 FR at 19622.

As EPA currently implements the Audit Policy, if an entity enters into an audit agreement with the Agency, ''the clock stops'' with regard to the Prompt Disclosure condition for any violations discovered thereafter and disclosed in accordance with the agreement.

a. Interim Approach to Prompt Disclosure Condition

Under the Interim Approach, EPA will allow limited flexibility in applying the Prompt Disclosure condition in the new owner context. For violations discovered pre-closing, prompt disclosure to EPA would have to be made within 45 days after the transaction closing to be considered for new owner incentives. For violations discovered post-closing, the new owner would have to disclose violations within 21 days after discovery or within 45 days after the transaction closing, whichever time period is longer. If a new owner has entered into an audit agreement with EPA, violations discovered and disclosed pursuant to that agreement would be governed by the disclosure schedule in the agreement. Of course, if a statute or regulation requires that a violation be reported or disclosed more quickly than the time frames above, disclosures must be made within the time limit established by law.

b. Discussion of Prompt Disclosure

Although EPA did not, in the First Notice, specifically ask for comment on the Prompt Disclosure condition, several commenters requested that violations discovered in pre-acquisition due diligence be considered promptly disclosed if disclosures were made between 30 and 60 days after closing. Commenters described the many immediate and competing priorities that may distract from focusing corporate attention on a decision to make voluntary disclosures to a regulatory agency. Commenters noted that without adequate time for the new management to consider whether to self-disclose the issues found in pre-transaction due diligence reviews, the default decision may be to not engage with EPA, but rather to quietly fix problems found. EPA recognizes that the time period immediately following a transaction closing may be quite turbulent and that, notwithstanding the fact that the new owner had information about violations before acquisition, it may be a particularly difficult time to make speedy decisions about coming forward to EPA. To encourage new owners to decide to disclose due diligence findings, and in the spirit of the 2000 Audit Policy preamble language discussed above, the Agency will now allow new owners up to 45 days after acquisition to disclose and meet the Prompt Disclosure condition.

A few commenters requested that the post-closing timeframes for disclosure be extended from 21 days. With one exception, EPA does not see a compelling reason to change current implementation of the Audit Policy, since it provides adequate timeframes for regulated entities to meet the prompt disclosure condition. Any new owner concerned about its ability to meet the Prompt Disclosure condition can enter into an audit agreement during the first nine months after acquisition and ''the clock will stop'' with regard to prompt disclosure for violations discovered thereafter and disclosed in accordance with the agreement. EPA is willing to appropriately tailor timeframes and expectations for auditing and reporting to the new owner's particular situation (e.g., number and complexity of facilities, scope of audit).

However, if the new owner chooses not to enter into an audit agreement during the nine months after acquisition, disclosures would have to be made promptly either within 21 days of discovery or within 45 days of the closing, whichever is later. Otherwise, if EPA held that all violations found post-transaction had to be disclosed within 21 days, any problems found soon after closing would need to be disclosed earlier than the violations already discovered in pre-acquisition due diligence. To avoid this unintended result, EPA will allow the new owner to make disclosures by whichever date is later. For example, if a new owner discovered a violation a week after acquisition, prompt disclosure can be made within 45 days of the closing.

4. Discovery and Disclosure Independent of Government or Third Party Plaintiff Condition (Condition D.4.)

The Audit Policy states that violations must be discovered and identified before EPA or another government agency likely would have identified the problem. This condition provides that regulated entities must take the initiative to find violations on their own and disclose them promptly instead of waiting for an indication of pending enforcement action or third-party complaint. The Audit Policy lists the circumstances under which discovery and disclosure will not be considered independent. Discovery and disclosure must be made before the beginning of a federal, state or local agency inspection, investigation or information request; notice of a citizen suit; the filing of a complaint by a third party; the reporting of the violation to EPA (or other government agency) by a ''whistleblower'' employee; or imminent discovery of the violation by a regulatory agency. However, where EPA determines that a facility did not know it was under civil investigation, and EPA determines that the entity is otherwise acting in good faith, the Agency may exercise its discretion to reduce or waive civil penalties under the Audit Policy.

EPA encourages multi-facility auditing and does not intend that the ''independent discovery'' condition preclude the availability of the Audit Policy when multiple facilities are involved. Thus, for entities that own or operate multiple facilities, the fact that one facility is already the subject of an investigation, inspection, information request or third-party complaint does not preclude the Agency from exercising its discretion to make the Audit Policy available for violations self-discovered at other facilities owned or operated by the same regulated entity.

a. Interim Approach to Independent Discovery Condition

EPA is not changing its current interpretations of the Discovery and Disclosure Independent of Government or Third Party Plaintiff condition as applied to new owner disclosures.

b. Discussion of Independent Discovery

Although EPA did not, in the First Notice, specifically ask for comment on the Independent Discovery condition,

one commenter suggested that disclosures of violations found during due diligence that were raised by third parties or governmental agencies should not be disqualified from Audit Policy consideration under this condition. The Agency disagrees. For example, in a matter involving a new owner, it is possible that potential violations have already been reported by the seller or included by the seller in a report to a regulatory agency, especially when the seller had been under an obligation to perform monitoring, sampling, or auditing. Because the new owner's disclosure of those violations would not have occurred prior to ''imminent discovery'' by the government or the commencement of a government investigation, EPA would be unable to apply Audit Policy penalty mitigation. Also, if a government agency has initiated an investigation and the facility's prior owner were aware of this, such issues would be considered ''known,'' and the new owner would not receive Audit Policy consideration and new owner benefits. An underlying objective of the Audit Policy is to conserve government resources and those of citizen plaintiffs by encouraging the regulated community to self-police. That objective would be thwarted, in part, if the Agency conferred Audit Policy benefits on a new owner on notice that its facility is already under investigation. While EPA does not want to expend its limited resources to conduct fact-finding on the extent to which a new owner was aware of a pending civil investigation prior to disclosure, the Agency may exercise its discretion to waive or reduce penalties for new owners if EPA determines that (1) the new owner did not know that its newly acquired facility was under investigation and (2) the new owner is otherwise acting in good faith.

The Agency, of course, encourages the cooperative and speedy resolution of known violations. Even if the violation was ineligible for the Audit Policy, the Agency will generally consider the willingness of a new owner to address and correct problems a positive factor in determining the appropriateness of any EPA enforcement response, penalty assessment or resolution.

5. Correction and Remediation Condition (Condition D.5.)

Under the Audit Policy, the regulated entity must correct the disclosed violation within 60 calendar days from the date of discovery, certify in writing that the violation has been corrected, and take appropriate measures as required by law to remedy any environmental or human harm due to the violation.

In both the 2000 Audit Policy and the 2007 Frequently Asked Questions document, EPA recognizes that not all violations can be corrected in the 60-day time frame. EPA may allow for an extension of time for corrections that require significant expenditures, involve technically complex issues, or involve decisions for which an entity seeks or is required to obtain EPA, state or local input or approval. If more than 60 days will be needed to correct the violation, the entity must notify EPA in writing before the end of the 60-day period.

a. Interim Approach to Correction and Remediation Condition

EPA is not changing its current interpretation of the Correction and Remediation condition in the context of new owner disclosures.

Where violations are discovered by the new owner prior to acquisition, EPA will consider the date of the transaction closing as the date of discovery, for purposes of interpreting the Correction and Remediation condition. Thus, for violations found before the new owner owned the facility, correction would need to be completed within 60 days from the date of the acquisition closing, although EPA may agree to a longer period of time if appropriate and warranted.

b. Discussion of Correction and Remediation

Although EPA did not, in the First Notice, specifically ask for comment on the Correction and Remediation condition, many commenters discussed it. While some commenters sought extensions to 90 or 120 days from the 60-day prompt correction period, other commenters supported maintaining the Agency's current interpretation, and some commenters from the regulated community acknowledged that violations frequently can be handled case-by-case under today's existing disclosure process (e.g., under the Audit Policy). One commenter urged that, in designing any tailored incentives for new owners, the Agency take care that any new owner approach not be used by the disclosing entity as a means to delay compliance.

One of EPA's primary goals in developing the approach to new owners is to secure pollutant reductions and environmental improvements as quickly as possible, and a blanket extension of the 60-day correction period would undercut that aim. However, especially in the context of an audit agreement involving complex facilities and technical issues, the Agency is willing to consider tailoring a compliance schedule appropriate for the situation and circumstances.

One commenter requested that EPA issue enforcement discretion letters to allow the continued operation of noncompliant facilities while they wait for ''completion of required acts.'' EPA's standing policy on enforcement discretion only allows the Agency to approve such a ''no action assurance'' in extremely unusual circumstances where it is clearly necessary to serve the public interest and where no other mechanism can adequately address the situation.[8] In the scenario described, an appropriate approach already exists, since under EPA's current application of the Audit Policy the Agency recognizes that not all violations can be corrected within 60 days of discovery. EPA may allow an extension for corrections that require significant expenditures, involve technically complex issues, or involve decisions for which an entity seeks or is required to obtain EPA or state input or approval (e.g., permits). While the Agency may consider a permit application adequate to address timing under the correction condition under the Audit Policy, ultimately any resolution of the underlying violation will be conditioned on the timely and full achievement of compliance, and that caveat will be clearly stated in any settlement or resolution documents. Where a violation cannot be fully corrected until a permit is received by the new owner, EPA may require the new owner to implement interim measures or controls as part of the settlement document.

6. Prevent Recurrence (Condition D.6.)

Under the Prevent Recurrence condition, the disclosing entity must agree in writing to take steps to prevent a recurrence of the violation after it has been disclosed and corrected. Preventative steps may include, but are not limited to, improvements to the entity's environmental auditing efforts or compliance management system.

a. Interim Approach to Prevent Recurrence Condition

EPA is not changing the Prevent Recurrence condition of the Audit Policy as applied to new owner disclosures.

[8] *See* ''Processing Requests for Use of Enforcement Discretion,'' Memorandum from Steven A. Herman (March 3, 1995), which can be found on the Internet at *http://www.epa.gov/compliance/resources/policies/civil/io/proreq-hermn-mem.pdf.*

b. Discussion of Prevention of Recurrence

No comments were received on the Prevent Recurrence condition. A fundamental goal of the Audit Policy is to create incentives for regulated entities to not only look for and correct environmental violations, but to put systems and practices in place to prevent the recurrence of the violation disclosed. EPA will continue to apply this condition to require new owners to agree take steps to prevent the recurrence of violations disclosed. An underpinning of the significant penalty mitigation offered under the Audit Policy is the assurance from the disclosing entity that the problem that gave rise to the violation has in fact been fully addressed, and EPA sees no reason to propose a different approach for new owners.

7. No Repeat Violations Condition (Condition D.7.)

Condition 7 of the Audit Policy provides that repeat violations are not eligible for Audit Policy benefits. Specifically, under the No Repeat Violations condition, the same or closely-related violation must have not occurred at the same facility within the past three years. For purposes of this condition, the term ''violation'' includes any violation subject to a federal, state or local civil judicial or administrative order, consent agreement, conviction or plea agreement. Recognizing that minor violations are sometimes settled without a formal action in court or in an administrative enforcement proceeding, the term also covers any act or omission for which the regulated entity has received a penalty reduction. When the facility is part of a multi-facility organization, the Audit Policy is not available if the same or closely-related violation occurred as part of a pattern of violations at one or more of these facilities within the last five years.

As articulated in the preamble to the Audit Policy, ''[i]f a facility has been newly acquired, the existence of a violation prior to the acquisition does not trigger the repeat violations exclusion'' as to the new owner. *See* 65 FR at 19623 (April 11, 2000). Most recently, in the Answer to Question 5 of EPA's 2007 Frequently Asked Questions document, the Agency stated that new owners that undertake examinations of newly acquired facilities generally will be eligible under the No Repeat Violations condition of the Audit Policy irrespective of the new owner's history of violations at other facilities that were not recently acquired.

a. Interim Approach to No Repeat Violations Condition

EPA is not changing its current interpretations of the No Repeat Violations condition as applied to new owner disclosures.

b. Discussion of No Repeat Violations

Several comments discussed the Repeat Violations condition, and all support the Agency's current interpretation. The Repeat Violations exclusion benefits both the public and law-abiding entities by ensuring that penalties are not waived for those entities that have previously been on notice of violations, and failed to prevent repeat violations.

8. Other Violations Excluded Condition (Condition D.8.)

The Audit Policy provides that certain violations are not eligible for the incentives available under the Policy. In order to be eligible for Audit Policy consideration, the violation cannot be one which (a) resulted in serious actual harm, or may have presented an imminent and substantial endangerment, to human health or the environment, or (b) violates the specific terms of any judicial or administrative order, or consent agreement.

a. Interim Approach to Exclusion of Violations Condition for Violations Which Resulted in Serious Actual Harm or May Have Presented an Imminent and Substantial Endangerment

Under EPA's Interim Approach, absent a fatality, community evacuation, or other seriously injurious or catastrophic event, where the violation that gave rise to serious actual harm or imminent and substantial endangerment began before the new owner acquired the facility, EPA will not exclude new owners' disclosures of such violations from Audit Policy consideration because of the Other Violations Excluded condition.

This eligibility for Audit Policy consideration and penalty mitigation would not affect either the new owner's independent obligation to notify appropriate regulatory authorities in the event of a release or the new owner's liability for the violation and its correction. In all circumstances, EPA reserves its authority and ability to take enforcement action to abate any endangerment or address violations, including the issuance of appropriate orders.

b. Discussion of Serious Actual Harm and Imminent and Substantial Endangerment

Although EPA did not, in the First Notice, specifically ask for comment on the Other Violations Excluded condition, the Agency received several comments about allowing Audit Policy consideration for violations that may have caused ''serious actual harm.'' Commenters contended that unless EPA were more flexible in implementing this condition, the Agency would not receive disclosures of significant violations, since a new owner could not be confident of receiving any Audit Policy consideration.

The incentives for new owners are specifically aimed at encouraging the disclosure and correction of these potentially more serious violations. EPA's goal is to motivate new owners to find and disclose violations, which will, once corrected, result in significant environmental protection and benefit. For example, EPA wants to encourage new owners to identify and correct New Source Review violations, and put in place the required environmental controls avoided by previous owners.

EPA recognizes that such significant violations may meet the threshold of what results in serious actual harm or may have presented an imminent and substantial, and that the Audit Policy specifically excludes such violations. EPA's waiver, absent catastrophic events, of part (a) of Condition D.8. in the new owner context, is intended to allow and invite new owner disclosures of significant violations which began before acquisition, without either undermining the Agency's ability to invoke its imminent and substantial endangerment authorities to address similar violations, or compromising EPA's ability to allege that similar violations resulted in serious actual harm.

The Agency believes the specific goals and equities of the new owner context warrant the decision to create an exception for the Interim Approach to allow the disclosure of serious violations by new owners, with the caveats described above in section II.D.8.a. However, EPA seeks further comment on creating this exception.

9. Cooperation (Condition D.9.)

Under the Audit Policy, the regulated entity must cooperate as required by EPA and provide the Agency with the information it needs to determine Policy applicability. With respect to this condition, EPA looks only to whether an entity cooperated with the Agency in the consideration of the entity's request

for treatment under the Audit Policy, not whether the entity has cooperated with the Agency in past matters or whether the entity is in litigation with the Agency on other matters.

a. Interim Approach to Cooperation Condition

EPA is modifying the Cooperation condition of the Audit Policy only to make clear that the disclosing entity must cooperate with EPA and provide such information as is necessary and requested by EPA to determine the applicability of the Audit Policy, as modified by this Interim Approach. In particular, EPA may ask an entity seeking new owner benefits to provide information to support its submission that it is a ''new owner'' as defined under Section II.A.

b. Discussion of Cooperation

No comments were requested or received concerning the Cooperation condition. However, because the Interim Approach applies only to ''new owners'' and modifies certain conditions of the Audit Policy, the Agency wants to make clear that regulated entities seeking treatment under the Interim Approach will be expected to cooperate by providing information as necessary and requested by EPA to determine whether such entities are entitled to new owner benefits. In all other respects, EPA will continue to apply the Cooperation condition, as articulated in the Audit Policy and EPA's Answer to Question 7 of the 2007 Frequently Asked Questions document, to violations disclosed pursuant to the Interim Approach. *See* 65 FR at 19623.

E. Other Issues Related to the Interim Approach

1. Consideration of Indemnification Agreements

Most commenters did not recommend that the Agency take indemnification agreements into account in designing its approach to new owners' disclosures. They noted the confidential nature of such agreements, and urged that EPA not try to investigate arrangements for risk allocation between a buyer and seller that are properly determined by the marketplace. Many commenters asserted that the analysis of such indemnification agreements would be complex, costly and time-consuming. As EPA's focus is on the effective use of scarce government resources to achieve compliance and significant environmental benefits, the Agency does not intend to scrutinize or consider indemnification agreements a new owner may have arranged.

2. Effect on Merger and Acquisition (M&A) Activity

EPA does not believe there is a high probability that implementing an Interim Approach to resolving Audit Policy disclosures from new owners would have a noticeable effect on merger and acquisition activity. The Agency did receive comments suggesting that encouraging new owners to disclose violations might lead sellers to either avoid buyers likely to audit and disclose, or to include ''no-tell'' clauses in their transaction or indemnity agreements, making indemnification contingent on the new owner refraining from any disclosures of environmental or other violations to the government.

However, EPA also received comments asserting that consideration of environmental compliance liabilities, as opposed to environmental contamination and clean-up liabilities, is generally not a driving force in, or important element of, M&A transactions. In addition, the Agency received comments suggesting that such incentives for new owners might have a beneficial effect on negotiations, encouraging prospective sellers to address violations before closing, or giving prospective buyers leverage to negotiate for the seller to correct violations found during due diligence. If sellers were to include ''no tell'' clauses in their transaction or indemnity agreements, such clauses may well be voidable as contrary to the public interest.

3. Approach to Sellers

EPA received comments urging it to provide enforcement protection to the prior owners of facilities whose new owners have disclosed noncompliance under the Audit Policy. However, EPA does not believe that this would be appropriate. Moreover, the Agency does not intend to allow sellers the same penalty mitigation benefits as new owners, as requested by some commenters, or to require joint disclosures from buyer and seller. A seller that did not discover, disclose and correct violations when it operated a facility should not be a beneficiary of the Audit Policy, simply because the facility's new owner decides to undertake such actions. The opportunity to properly operate the facility and to address noncompliance, including through use of the Audit Policy, was available to the seller while it operated the facility. Resolving the violations with the new owners should provide the appropriate environmental controls and improvements necessary to reduce pollution and ensure ongoing compliance at the facility. Nevertheless, the Agency reserves its rights to pursue sellers where the circumstances and equities warrant.

4. Recognition as an Incentive

Some commenters supported the idea of recognition from EPA as an incentive to motivate disclosures from new owners, but others noted the potential for publicity to be misunderstood or misinterpreted. Some types of recognition suggested, such as logos and public promotions, seemed more appropriate for an Agency award program. Other ideas, such as access to an ombudsman who would keep internal lists of participants and seek to resolve company disputes with regulators, seemed unsuitable as recognition for having used the Audit Policy to disclose and resolve violations, notwithstanding the Agency's appreciation of a new owner's choice to come forward. Some commenters suggested making recognition optional, or letting the new owners choose the sort of recognition to receive, but these concepts pose sufficient implementation difficulties to make them unattractive options for the Agency. EPA does recognize the voluntary nature of the new owner's choice to come forward to the government and will seek to appropriately reflect that in Agency statements concerning the disclosure and correction of violations by new owners.

5. State and Local Coordination

Commenters noted that lack of coordination or inconsistencies with state programs, and state audit policies where they exist, may dissuade new owners from coming forward to EPA, and that new owners might choose instead to deal with states, especially where states are authorized to implement federal regulatory programs. EPA recognizes that state and local regulatory agencies are partners in implementing the enforcement and compliance assurance program, and has established ways of coordinating and working together with our state and local partners. When consistent with EPA's policies on protecting confidential and sensitive information, the Agency will share with state and local agencies information relating to the disclosure of violations of federally-authorized, approved or delegated programs. Whether a new owner should make a disclosure to EPA, the state, or both, depends on the type of regulation violated, availability of a state audit program, whether multiple facilities located in different states are involved,

and the scope of legal relief sought by the entity. Federal liability can only be resolved by EPA.

6. Confidentiality

Various commenters expressed concern about the confidentiality of both audit and transaction documents. The Agency does not believe these concerns are warranted. First, it is generally not EPA's intention to request documents related to the transaction, since the Agency has no plans to review or analyze them. Second, since 1986, the Agency has had a policy to refrain from routine requests for audit reports in the context of disclosures of civil violations, except in the rare event that the information is necessary to determine whether the conditions of the Audit Policy have been met. This Policy was re-affirmed in the 2000 Audit Policy, and EPA will not alter this practice in the context of disclosures from new owners. Third, EPA has long-standing policies of not publicly disclosing any information that might interfere with settlement negotiations [9] and of withholding Audit Policy self-disclosures from release prior to resolution of the disclosures.[10]

F. How Should a New Owner Self-Disclose or Request an Audit Agreement?

New Owners should contact either Philip Milton ((202) 564–5029, *milton.philip@epa.gov*) or Caroline Makepeace ((202) 564–6012 or *makepeace.caroline@epa.gov*) of EPA's Office of Enforcement and Compliance Assurance, Office of Civil Enforcement, Special Litigation and Projects Division regarding disclosures or audit agreements.

G. Applicability

This Interim Approach applies to settlement of claims for civil penalties for any violations under all of the federal environmental statutes that EPA administers. EPA has issued documents addressing several applicability issues pertaining to the Audit Policy. New owners considering whether to take advantage of the Interim Approach should review those documents as well as the 2000 Audit Policy to see whether they address any relevant questions. The 2000 Audit Policy and related documents are available on the Internet at *http://www.epa.gov/compliance/incentives/auditing/auditpolicy.html*. Additional guidance for implementing the Policy in the context of criminal violations can be found at *http://www.epa.gov/compliance/resources/policies/incentives/auditing/auditcrimvio-mem.PDF*.

To the extent that the Interim Approach's conditions or criteria differ from the 2000 Audit Policy, the 2007 Frequently Asked Questions, or the 1997 Interpretive Guidance, the Interim Approach will, in the new owner context, supersede any inconsistent provisions. All other provisions of the 2000 Audit Policy and the two other documents will continue to apply to self-disclosing new owners.

The Interim Approach is intended to inform the public and regulated entities of the Agency's current enforcement approach to new owners disclosing violations under the Audit Policy. As is the case with all Agency policies, application of the Audit Policy and this Interim Approach is subject to EPA's enforcement discretion and is not binding on the public or EPA. *See also* Section II.G. of the 2000 Audit Policy for discussion of the Audit Policy's applicability (65 FR 19626).

H. Approach to Assessment of Interim Approach

1. Measures to Assess Interim Approach

The Agency intends to assess the effectiveness of the Interim Approach on an ongoing basis and will measure the following indicators:

a. Number of new owner disclosures resolved.

b. Pounds of pollutants estimated to be reduced, treated or eliminated.

c. Dollars invested in improved environmental performance or improved environmental management practices.

In addition, to help the Agency assess the Interim Approach and identify where opportunities may exist to improve it, EPA intends to observe the number of recently acquired facilities whose new owners chose not to make ''new owner'' disclosures under the Audit Policy. Within a relevant universe of mergers and acquisitions transactions (i.e., facilities under new ownership which are subject to environmental regulations and requirements), EPA will identify facilities whose new owners did not audit and disclose to EPA, and cross-reference these newly acquired facilities with other already available enforcement data (e.g., history of violations, unresolved violations, last inspections, type of permitted activity, priority area).

2. Discussion of Measures and Assessment

Commenters were supportive of testing and assessing the effectiveness of a tailored approach to new owners, but not of limiting the effort in scope or size, or to any particular industrial sector. Some commenters urged a focus on only compliance measures (e.g., number of violations corrected, number of violators in compliance, number and type of disclosures), while other commenters discussed pollution reductions as the best measure of success, albeit acknowledging that such reductions can be difficult to quantify. Some commenters recommended that the Agency define criteria for significant environmental improvement.

The measures described above focus on both increases in compliance and benefits to the environment, tracking not only the number of new owner disclosures resolved but also how much was expended to correct them, and how much of an effect on pollution those corrections had. In addition, since the Agency is interested in an accurate assessment of how much the Interim Approach may motivate new owners to come forward to EPA, the Agency intends to track new owners that did not take advantage of the Audit Policy. EPA will look at a relevant sub-set of ongoing mergers and acquisitions activity (i.e., facilities under new ownership which are subject to environmental regulations and requirements) and may narrow the scope of inquiry further, to focus on facilities that have significant environmental regulatory obligations, or on facilities in certain sectors. Such an effort may help give EPA a sense of the sorts of enforcement issues the Agency may be ''missing'' in the effort to promote disclosures and compliance.

EPA may also identify some of the non-disclosing facilities which changed ownership nine months or more before as potential ''facilities of interest,'' where the analysis of available enforcement data indicates there may be compliance issues, or significant gaps in EPA's understanding of a facility's compliance status. While such facilities may potentially be ripe or appropriate for an inspection or enforcement attention, EPA has not established any new enforcement priority focused on M&A transactions or recently acquired facilities. EPA does expect, however, that awareness that the Agency will be tracking disclosures after relevant transactions may favorably affect the

[9] *See* ''Restrictions on Communicating with Outside Parties Regarding Enforcement Actions,'' Memorandum from Granta Y. Nakayama (March 8, 2006), which can be found on the Internet at *http://www.epa.gov/compliance/resources/policies/civil/io/commrestrictions-nakayamamemo030806.pdf*.

[10] *See* ''Confidentiality of Information Received under the Agency's Self-Disclosure Policy,'' Memorandum from Steven A. Herman (January 16, 1997), which can be found on the Internet at *http://www.epa.gov/compliance/resources/policies/incentives/auditing/sahmemo.pdf*.

tipping point of the new owner's internal risk analysis in favor of auditing and disclosing. EPA's tracking is intended to help inform the Agency's assessment of the effectiveness of the Interim Approach and may at some point serve as a scoping element for enforcement planning.

III. Public Process

EPA seeks public comment on the Interim Approach described in this Notice, and asks that comments be specifically aimed at improving the overall design and specific elements of the Interim Approach, as well as at addressing any relevant issues or considerations which may not appear to be reflected. The public comment docket will be open for a period of 90 days. The Agency will concurrently begin applying the Interim Approach, as EPA believes the most efficient way to effectively test this strategy, and learn from practical experience, is to implement it on an interim basis.

EPA will be reviewing public comment as it is received and will continue its dialogue with stakeholders on whether refinements to the Interim Approach are needed. In addition, the Agency will place into the public docket copies of agreements resolving violations disclosed by new owners under the Interim Approach. EPA intends to assess the effectiveness of the Interim Approach on a continual basis. Based on public comment and after the Agency has gained sufficient experience in implementing the Interim Approach, EPA will decide to finalize, revise or discontinue these tailored incentives for new owners.

EPA encourages parties of all interests, including state, tribal and local government, industry, not-for-profit organizations, municipalities, public interest groups and private citizens to comment, so that the Agency can hear from as broad a spectrum of stakeholders as possible.

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

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

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

- Identify the Notice and Request for Comments by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The Agency may ask you to respond to specific questions.
- Explain why you agree or disagree; suggest alternatives and language.
- Describe any assumptions and provide any technical information and/or data that you used.
- If possible, provide any pertinent information about the context for your comments (e.g., the size and type of acquisition transaction you have in mind).
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible.
- Submit your comments on time.

Dated: July 25, 2008.

Granta Y. Nakayama,

Assistant Administrator, Office of Enforcement and Compliance Assurance.

[FR Doc. E8–17715 Filed 7–31–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CG Docket No. 03–123; DA 08–1673]

Notice of Certification of State Telecommunications Relay Service (TRS) Programs

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Consumer & Governmental Affairs Bureau (Bureau) grants certification of fifty states', two territories', and the District of Columbia's TRS programs. The current certification for state TRS programs expires this year. This action certifies state TRS programs for the next five years, pursuant to the Commission's rules.

DATES: Certifications effective July 26, 2008, through July 25, 2013.

FOR FURTHER INFORMATION CONTACT: Diane Mason, (202) 418–7126 (voice), (202) 418–7828 (TTY), or e-mail: *Diane.Mason@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Bureau's public notice DA 08–1673, released July 16, 2008, in CG Docket No. 03–123. The full text of document DA 08–1673 is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. It also may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554; the contractor's Web site, *http://www.bcpiweb.com*; or by calling (800) 378–3160.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY). Document DA 08–1673 can also be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro/trs.html.* In addition, the applications for certification may be viewed on the Bureau's Disability Rights Office Web site at *http://www.fcc.gov/cgb/dro/trs_by_state.html* .

Synopsis

The applications for certification of TRS programs of the states, territories, and the District of Columbia listed below (hereinafter, ''states'') have been granted, pursuant to Title IV of the Americans with Disabilities Act (ADA), 47 U.S.C. 225(f)(2), and 47 CFR 64.606(b). On the basis of the state applications, the Bureau has determined that:

(1) The TRS program of the states meet or exceed all operational, technical, and functional minimum standards contained in 47 CFR 64.604;

(2) The TRS programs of the listed states make available adequate procedures and remedies for enforcing the requirements of the state program; and

(3) The TRS programs of the listed states in no way conflict with federal law.

The Bureau also has determined that, where applicable, the intrastate funding mechanisms of the listed states are labeled in a manner that promotes national understanding of TRS and does not offend the public, consistent with 47 CFR 64.606(d).

Because the Commission may adopt changes to the rules governing relay

programs, including state relay programs, the certification is conditioned on a demonstration of compliance with any additional new rules that are adopted by the Commission. The Commission will provide guidance to the states on demonstrating compliance with such rule changes.

In response to the public notice seeking comment on the applications for certification of state TRS programs, *Applications for Certification as Certified State Telecommunications Relay Service (TRS) Programs Filed; Pleading Cycle Established for Comment on Applications,* CG Docket No. 03–123, DA 08–60, published at 73 FR 9118, February 19, 2008, the Commission received 84 comments, all of which address Speech-to-Speech (STS) outreach. As part of their applications for certification, states were required to submit specific examples of all outreach activities, including those targeted to users and receivers of STS services. We reviewed each of the outreach plans submitted by the states in conjunction with each of the applications listed below and found them to be in compliance with the Commission's requirements. The Bureau reminds states receiving certification of their continued obligation to engage in outreach activities, or to ensure that their contracted TRS providers conduct outreach in accordance with 47 CFR 64.604(c)(3).

This certification, as conditioned, shall remain in effect for a five year period, beginning July 26, 2008, and ending July 25, 2013, pursuant to 47 CFR 64.606(c). One year prior to the expiration of this certification, beginning July 25, 2012, the states may apply for renewal of their TRS program certification by filing documentation in accordance with the 47 CFR 64.606(a) and (b). States Approved for Certification:

File No: TRS–46–07, Alabama Public Service Commission, State of Alabama.
File No: TRS–47–07, Arkansas Deaf and Hearing Impaired, State of Arkansas.
File No: TRS–32–07, California Public Utilities Commission, State of California.
File No: TRS–48–07, Connecticut Department of Public Utility, State of Connecticut.
File No: TRS–49–07, Public Service Commission, District of Columbia
File No: TRS–51–07, Georgia Pubic Service Commission, State of Georgia.
File No: TRS–43–07, Idaho Public Service Commission, State of Idaho
File No: TRS–08–07 Indiana Telephone Relay Access Corporation, State of Indiana.
File No: TRS–07–07, Kansas Relay Services, Inc., State of Kansas .....
File No: TRS–13–07, Louisiana Relay Administration Board, State of Louisiana.
File No: TRS–33–07, Telecommunications Access of Maryland, State of Maryland.
File No: TRS–54–07, Michigan Public Service Commission, State of Michigan.
File No: TRS–55–07, Mississippi Public Service Commission, State of Mississippi.
File No: TRS–56–07, Telecommunications Access Program, State of Montana.
File No: TRS–25–07, Relay Nevada, State of Nevada .....
File No: TRS–45–07, New Jersey Board of Utilities, State of New Jersey.
File No: TRS–16–07, New York State Department of Public Service, State of New York.
File No: TRS–12–07, Information Technology Department, State of North Dakota.
File No: TRS–57–07, Oklahoma Telephone Association, State of Oklahoma.
File No: TRS–58–07, Pennsylvania Bureau of Consumer Services, Commonwealth of Pennsylvania.
File No: TRS–59–07, Division of Public Utilities and Carriers, State of Rhode Island.
File No: TRS–60–07, Department of Human Services, State of South Dakota.
File No: TRS–17–07, Texas Public Utility Commission, State of Texas
File No: TRS–09–07, Public Service Commission, State of Utah .....
File No: TRS–04–07, Department for the Deaf and Hard of Hearing, Commonwealth of Virginia.
File No: TRS–06–07, Public Service Commission of West Virginia, State of West Virginia.
File No: TRS–18–07, Division of Vocational Rehabilitation, State of Wyoming.
File No: TRS–19–07, Department of Commerce, State of Alaska.
File No: TRS–02–07, Commission for the Deaf and Hard of Hearing, State of Arizona.
File No: TRS–23–07, Colorado Public Utilities Commission, State of Colorado.
File No: TRS–35–07, Delaware Public Service Commission, State of Delaware.
File No: TRS–50–07, Florida Public Service Commission, State of Florida.
File No: TRS–22–07, Hawaii Public Utilities Commission, State of Hawaii.
File No: TRS–10–07, Illinois Commerce Commission, State of Illinois.
File No: TRS–03–07, Iowa Utilities Board, State of Iowa.
File No: TRS–52–07, Kentucky Public Service Commission, Commonwealth of Kentucky.
File No: TRS–53–07, Maine Public Utilities Commission, State of Maine.
File No: TRS–34–07, Department of Telecommunications and Energy, Commonwealth of Massachusetts.
File No: TRS–39–07, Minnesota Department of Commerce, State of Minnesota.
File No: TRS–15–07, Missouri Public Service Commission, State of Missouri.
File No: TRS–40–07, Nebraska Public Service Commission, State of Nebraska.
File No: TRS–42–07, New Hampshire Public Service Commission, State of New Hampshire.
File No: TRS–14–07, Commission for the Deaf and Hard of Hearing, State of New Mexico.
File No: TRS–30–07, Department of Health and Human Service, State of North Carolina.
File No: TRS–37–07, Public Utilities Commission of Ohio, State of Ohio.
File No: TRS–36–07, Oregon Public Utilities Commission, State of Oregon.
File No: TRS–28–07, Telecommunications Regulatory Board, Puerto Rico.
File No: TRS–11–07, South Carolina Office of Regulatory Staff, State of South Carolina.
File No: TRS–20–07, Tennessee Regulatory Authority, State of Tennessee.
File No: TRS–61–07, Virgin Islands Public Services Commission, U.S. Virgin Islands.
File No: TRS–44–07, Vermont Department of Public Service, State of Vermont.
File No: TRS–27–07, Office of the Deaf and Hard of Hearing, State of Washington.
File No: TRS–01–07, Wisconsin Department of Administration, State of Wisconsin.

Federal Communications Commission.

Nicole McGinnis,

Deputy Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. E8–17695 Filed 7–31–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WT Docket No. 07–250; DA 08–1331]

Consumer and Governmental Affairs Bureau Reminds Digital Wireless Handset Manufacturers and Public Mobile Service Providers of Obligation To Designate an Agent for Hearing Aid Compatibility Issues

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Consumer and Governmental Affairs Bureau (Bureau) reminds public mobile service providers and digital wireless handset manufacturers of their obligation to designate an agent for service of informal complaints received by the Commission, as well as notices, inquiries, and orders, relating to hearing aid compatibility.

DATES: The requirement to designate a service and contact agent became effective June 6, 2008.

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

FOR FURTHER INFORMATION CONTACT: Arlene Alexander, Consumer and Governmental Affairs Bureau, Disability Rights Office at (202) 418–0581 (voice), (202) 418–0183 (TTY), or e-mail *Arlene.Alexander@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Bureau's document DA 08–1331, released June 5, 2008. A copy of document DA 08–1331 will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Document DA 08–1331 also may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact the Commission's duplicating contractor at its Web site *http://www.bcpiweb.com* or by calling 1–800–378–3160.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY). Document DA 08–1331 also can be downloaded in Word and Portable Document Format (PDF) at *http://www.fcc.gov/cgb/dro/hearing.html.*

The designation required by *Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets, Petition of American National Standards Institute Accredited Standards Committee C63 (EMC) ANSI ASC C63®,* WT Docket No. 07–250, First Report and Order, FCC 08–68, published at 73 FR 25566, May 7, 2008 (*2008 Hearing Aid Compatibility First Report and Order*), may be sent to the Commission via e-mail to *SECTION255_POC@fcc.gov,* or by mail to the Commission, Attention: Arlene Alexander, Room 3–C408 (*see* **ADDRESSES** section of this document for mailing address). Designated service agent information may be viewed through the Bureau's Disability Rights Office Web site at *http://www.fcc.gov/cgb/dro/section255.html.*

Synopsis

On February 28, 2008, the Commission released the *2008 Hearing Aid Compatibility First Report and Order,* which modified the Commission's hearing aid compatibility requirements applicable to providers of public mobile services and manufacturers of digital wireless handsets used in the delivery of those services. These modifications include requiring manufacturers and service providers to provide hearing aid compatibility contact information directly to the Commission for posting on the Commission's Web site. Specifically, the Commission amended 47 CFR 68.418 to require that manufacturers and service providers designate and identify one or more agents upon whom service may be made of all informal complaints, as well as notices, inquiries, orders, decisions, and other pronouncements of the Commission in any matter before the Commission. The regulations further provide that ''[s]uch designation shall be provided to the Commission and shall include a name or department designation, business address, telephone number, and, if available, TTY number, facsimile number, and Internet e-mail address.'' Finally, the regulations require the Commission to make this information available to the public.

Apart from requiring the provision of contact information directly to the Commission, the new regulations do not otherwise change the procedures for handling complaints alleging a violation of the Commission's hearing aid compatibility rules.

Federal Communications Commission

Nicole McGinnis,

Deputy Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. E8–17696 Filed 7–31–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: August 6, 2008—10 a.m.

PLACE: 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

STATUS: A portion of the meeting will be in Open Session and the remainder of the meeting will be in Closed Session.

Matters To Be Considered

Open Session

(1) *FMC Agreement No. 201188*—Houston Terminal, LLC Cooperative Working Agreement, effective August 9, 2008.

(2) *FMC Agreement No. 201189*—New Orleans Terminal, LLC Cooperative Working Agreement, effective August 9, 2008.

Closed Session

(1) Los Angeles/Long Beach Port/Terminal Agreements.

(2) Internal Administrative Practices and Personnel Matters.

FOR FURTHER INFORMATION CONTACT: Karen V. Gregory, Assistant Secretary, (202) 523–5725.

Karen V. Gregory,

Assistant Secretary,

[FR Doc. E8–17838 Filed 7–30–08; 4:15 pm]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices

also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 18, 2008.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. John Smoluch and Donna Smoluch, both of Coon Rapids, Minnesota, to retain and acquire control of Community Pride Bank Corporation, Ham Lake, Minnesota, and thereby indirectly retain and acquire control of Community Pride Bank, Isanti, Minnesota.

B. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. The Barbara Dean Flaming Trust and Brenda Jean Flaming Salinas, trustee; the Brenda Jean Flaming Trust and Barbara Dean Flaming Waite, trustee; the Michael Todd Flaming Trust and Brenda Jean Flaming Salinas, trustee; and the Flaming Children 2008 Irrevocable Trust and Gerald R. Chelgren, trustee; all of Cherokee, Oklahoma, part of a group acting in concert, to acquire and retain control of Alfalfa County Bancshares, Inc., and thereby indirectly acquire and retain control of ACB Bank, both in Cherokee, Oklahoma.

Board of Governors of the Federal Reserve System, July 29, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–17670 Filed 7–31–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 25, 2008.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. Embassy Bancorp, Inc., Bethlehem, Pennsylvania, to become a bank holding company by acquiring 100 percent of the voting shares of Embassy Bank for the Lehigh Valley, Bethlehem, Pennsylvania.

Board of Governors of the Federal Reserve System, July 28, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–17652 Filed 7–31–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 28, 2008.

A. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. BOSP Bancshares, Inc., Sun Prairie, Wisconsin, to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Sun Prairie, Sun Prairie, Wisconsin.

Board of Governors of the Federal Reserve System, July 29, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–17668 Filed 7–31–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of

Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 18, 2008.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. City First Enterprises, Inc., to engage *de novo* through its subsidiary, City First Homes, both of Washington, D.C., in lending and community development activities, pursuant to sections 225.28(b)(1), (b)(12)(i), and (b)(12)(ii) of Regulation Y.

B. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Early Bancshares, Inc., Blakely, Georgia, to acquire 100 percent of the outstanding shares of One South Bank, Chipley, Florida (in organization), and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y. Comments regarding this application must be received not later than August 28, 2008.

Board of Governors of the Federal Reserve System, July 29, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–17669 Filed 7–31–08; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–08–08BI]

Proposed Data Collections Submitted for Public Comment and Recommendations

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 Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

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 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. Written comments should be received within 60 days of this notice.

Proposed Project

Evaluation of the National Youth Violence Prevention Resource Center (NYVPRC)—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The origin of the National Youth Violence Prevention Resource Center (NYVPRC) is woven into the federal response to the Columbine High School shootings in 1999. As the Nation took a broad look at the issue of violence occurring in school settings, it became clear that violence among adolescents stretched far beyond the walls of educational institutions and presented a complex threatening public health concern requiring a comprehensive response. To that end, the White House established the Council on Youth Violence in October 1999 to coordinate youth violence prevention activities of all federal agencies. The Council, in collaboration with CDC and other federal agencies, directed the development of NYVPRC to serve as a user-friendly, single point of entry to potentially life-saving information about youth violence prevention.

Since 1999, a substantial body of evidence has evolved to support the belief that youth violence can be prevented through the comprehensive, systematic application of effective approaches. A better understanding of the key influencers on the prevention of youth violence has emerged.[1 2 3] Armed with this greater understanding, the NYVPRC's role has been refocused to better position it to respond to emerging needs.

This project will evaluate a pilot implementation of the revised NYVPRC Web site. The revised Web site will target local government and community leaders with youth violence-related online training, information resources and community workspace to build and sustain comprehensive, community-wide prevention efforts. The objectives of the NYVPRC pilot project are to determine (1) the usefulness and favorability of the online training, information resources and community workspaces, (2) the reach of targeted promotional efforts, and (3) progress made on short term outcomes. Four data collection tools will be used to measure these objectives: (1) User feedback surveys, (2) training surveys, (3) implementation interviews and (4) coalition capacity surveys.

User feedback surveys will elicit responses from users at various points on the NYVPRC Web site by inviting them via a pop-up window to complete an online survey that will take 5 minutes to complete. All questions will be closed-ended and intended to gather feedback on customer satisfaction regarding the various Web site functions. It is expected that each set of data will be collected from up to 15 different groups of individuals over a three year period. For each group, the response period will continue until a pre-determined number of surveys has been met therefore an 80 percent response rate is not a goal. The sample will not be representative of the entire population.

The training surveys will be conducted during the online training available through the Web site to assess satisfaction with and knowledge gained from the training. The training survey questions will be woven into three training modules that will be hosted on the Web site. Data will be collected electronically and, in total, the survey will take 15 minutes to complete.

Implementation interviews and coalition capacity surveys will be required as a criteria for participation in the pilot. The implementation interviews will be conducted with all coalition leaders invited to participate

[1] Centers for Disease Control and Prevention. (1999). Ten great public health achievements—United States, 1900–1999. Morbidity and Mortality Weekly Report, 48, 241–243.

[2] Mercy, J. A., Rosenberg, M. L., Powell, K. E., Broome, C. V., & Roper, W. L. (1993). Public health policy for preventing violence. Health Affairs, 12, 7–26.

[3] Mercy J, Butchart A, Farrington D, Cerdá M. Youth violence. In: Krug E, Dahlberg LL, Mercy JA, Zwi AB, Lozano R, editors. The World Report on Violence and Health. Geneva (Switzerland): World Health Organization; 2002. p. 25–56.

in the pilot project. Interviews will be conducted by phone using open-ended questions to determine coalition strengths, weaknesses, and barriers to coalition building and strategic planning efforts. Each interview will take 30 minutes. The capacity building surveys will be conducted with all members of the pilot project coalitions. These surveys will determine changes in the capacity of partner organizations associated with pilot coalitions and are expected to take 30 minutes to complete. The implementation interviews and coalition capacity surveys will be conducted at the beginning of the pilot period as a baseline measure and again at the end of the 12-month pilot period. The baseline information will assist CDC in tailoring technical assistance that might be required by the pilot communities. The evaluation will then utilize these baseline measures along with the information collected during the pilot to assess the Web site's success at supporting the development of community-wide youth violence prevention coalitions and subsequent strategic planning.

The pre-post research design of the evaluation will aid CDC in assessing the changes in knowledge, attitudes, and resource capacity associated with the NYVPRC Web site and will inform revision of the Web site materials for a future nationwide launch. There is no cost to respondents for any of these surveys.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Online Training Survey	400	1	15/60	100
User Feedback Survey	1000	1	5/60	83
Partner Survey	120	2	30/60	120
Coalition Capacity Survey	50	2	30/60	50
Total				353

Dated: July 24, 2008.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E8–17601 Filed 7–31–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–08–0278]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

National Hospital Ambulatory Medical Care Survey [OMB No. 0920–0278]—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The National Hospital Ambulatory Medical Care Survey (NHAMCS) has been conducted annually since 1992. The purpose of NHAMCS is to meet the needs and demands for statistical information about the provision of ambulatory medical care services in the United States. Ambulatory services are rendered in a wide variety of settings, including physicians' offices and hospital outpatient and emergency departments. The target of the NHAMCS to date has been in-person visits made to outpatient departments (OPDs) and emergency departments (EDs) of non-Federal, short stay hospitals (hospitals with an average length of stay of less than 30 days) or those whose specialty is general (medical or surgical) or children's general.

This revision is to transfer data gathering from the previously conducted National Survey of Ambulatory Surgery (NSAS) (OMB No. 0920–0334) to NHAMCS. After the 1994–1996 NSAS, funds were not available to gather this important, and much sought after, data until 2006. Due to a lack of funds it has not been possible to conduct an independent NSAS since that time and so, for 2009, NCHS proposes to begin the expansion of NHAMCS data gathering to include hospital-based ambulatory surgery centers (ASCs). Beginning in 2010, NCHS plans to seek OMB approval to expand NHAMCS to also include free-standing ASCs. The objective of this new collection will be to collect data about ambulatory surgery centers, the patients they serve, and the services they deliver. It will remain the principal source of data on ambulatory surgery center services in the United States. It has been the benchmark against which special programmatic data sources are compared. NHAMCS ASC data that will be collected include patient characteristics, diagnoses, surgical and nonsurgical procedures, provider and type of anesthesia, time in and out of surgery and postoperative care, and discharge disposition.

Users of NHAMCS data include, but are not limited to, congressional offices, Federal agencies, state and local governments, schools of public health, colleges and universities, private industry, nonprofit foundations, professional associations, clinicians, researchers, administrators, and health planners. There are no costs to the respondents other than their time. The total estimated annualized burden hours are 9,186.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Hospital Chief Medical Officer	Hospital Induction (NHAMCS–101)	470	1	55/60
Ancillary Service Executive	Ambulatory Unit Induction (NHAMCS–101/U)	845	2	1
Physician/Registered Nurse/Medical Record Clerk.	ED Patient Record form NHAMCS–100 (ED)]	220	100	7/60
Medical Record Clerk	Pulling and re-filing Patient Records	393	132	1/60
Physician/Registered Nurse/Medical Record Clerk.	OPD Patient Record form [NHAMCS–100 (OPD)].	125	200	6/60
Physician/Phys. Asst./Nurse Practitioner/ Nurse Midwife.	Cervical Cancer Screening Supplement (CCSS) (NHAMCS–906).	250	1	15/60
Physician/Registered Nurse/Medical Record Clerk.	ASC Patient Record form NHAMCS–100 (ASC).	107	100	6/60

Dated: July 24, 2008.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E8–17603 Filed 7–31–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–08–0212]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

National Hospital Discharge Survey—Revision—The National Hospital Discharge Survey (NHDS) (OMB# 0920–0212), National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on the extent and nature of illness and disability of the population of the United States. This three-year clearance request includes the data collection in 2008 and 2009 using the current NHDS design; a pretest of a new design; and data collection for 2010 and 2011 of the survey using the new design.

Current NHDS

The National Hospital Discharge Survey (NHDS) has been conducted continuously by the National Center for Health Statistics, CDC, since 1965. It is the principal source of data on inpatient utilization of short-stay, non-Federal hospitals and is the principal annual source of nationally representative estimates on the characteristics of discharges, the lengths of stay, diagnoses, surgical and non-surgical procedures, and the patterns of use of care in hospitals in various regions of the country. It is the benchmark against which special programmatic data sources are measured. The data items collected are the basic core of the variables contained in the Uniform Hospital Discharge Data Set (UHDDS) in addition to several variables (admission source and type, admitting diagnosis and present on admission indicators) which are identical to those needed for billing of inpatient services for Medicare patients. In the current survey, data are obtained in one of three ways: Abstracted by hospital staff; abstracted by Bureau of the Census Staff under an interagency agreement; and provided in electronic format. Due to budgetary constraints, the number of hospitals and the number of discharges for the 2008 and 2009 NHDS data collections will decrease by approximately 50% from previous years.

Redesigned NHDS

Although the current NHDS is still fulfilling its intended functions, it is based on concepts from the health care delivery system, as well as the hospital and patient universes, of previous decades. It has become clear that a redesign of the NHDS that provides greater depth of information is necessary.

In 2008, a sample of 30 hospitals will be selected for a pretest. These hospitals will not be a probability sample, but instead will be intentionally selected to include hospitals of differing size, location and other characteristics related to their service and patient clientele.

In 2010, a redesigned NHDS will be implemented and will consist of a completely new sample of approximately 240 hospitals. The redesigned NHDS will use a modified two stage design. The first stage sampling will be hospitals. The second stage of sampling will be discharges. A stratified, random sample of 120 discharges is targeted within each hospital. In the redesigned survey all data will be abstracted by trained health care staff under contract. All data will be obtained from hospital records and charts and computer systems.

The current data items will be collected with significant additional details. Patient level data items to be collected include personal identifiers such as social security number (last 4 digits), name and medical record number; clinical laboratory results such as hematocrit and white blood cell count; and financial billing and record data. The survey includes detailed questions for three modules: Acute myocardial infarction; infectious disease; and end of life issues. Facility level data items include demographic information, clinical capabilities, and financial information.

Users of NHDS data include, but are not limited to the CDC; the Congressional Research Office; the Office of the Assistant Secretary for Planning and Evaluation (ASPE); American Health Care Association, Centers for Medicare and Medicaid

Services (CMS), and Bureau of the Census. Data collected through the NHDS are essential for evaluating health status of the population, for the planning of programs and policy to elevate the health status of the Nation, for studying morbidity trends, and for research activities in the health field. NHDS data have been used extensively in the development and monitoring of goals for the Year 2000 and 2010 Healthy People Objectives. In addition, NHDS data provide annual updates for numerous tables in the Congressionally-mandated NCHS report, *Health, United States*. Other users of these data include universities, research organizations, foundations, and a variety of users in the print media. There is no cost to respondents other than their time to participate. The total estimated annualized burden hours are 5,591.

TABLE 1—ESTIMATED ANNUALIZED BURDEN HOURS

Type of data collection	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Current NHDS Primary Procedure Hospitals Sample Listing Sheet	13	12	25/60
Current NHDS Primary Procedure Hospitals Medical Abstract Form	13	250	5/60
Current NHDS Primary Procedure Hospitals Transmittal Notice	13	12	1/60
Current NHDS Alternate Procedure Hospitals locating medical records	41	250	1/60
Current NHDS In-House Tape or Printout Hospital—computer programming and submission	29	12	13/60
Current NHDS Hospital Interview Questionnaire	10	1	2
Redesigned pretest Survey presentation to hospital	10	1	1
Redesigned pretest Facility questionnaire	10	1	4
Redesigned pretest Sample discharges within hospital, obtain UB–04 & payment data	10	10	14/60
Redesigned pretest Verify sampling & reabstract medical records	2	10	14/60
Redesign pretest Debrief hospital staff	10	1	1
Redesigned 2010–2011 Survey presentation to hospital	80	1	1
Redesigned 2010–2011 Facility questionnaire	80	1	4
Redesigned 2010–2011 Sample discharges within hospital, obtain UB–04 & payment data	160	120	14/60
Redesigned 2010–2011 Verify sampling & re-abstract medical records	3	25	14/60

Dated: July 24, 2008.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E8–17605 Filed 7–31–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10265]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Mandatory Insurer Reporting Requirements of Section 111 of the Medicare, Medicaid and SCHIP Act of 2007 (MMSEA) (Pub. L. 110–173); *Use:* Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007 (Pub. L. 110–173) amends the Medicare Secondary Payer (MSP) provisions of the Social Security Act (42 U.S.C. 1395y(b)) to provide for mandatory reporting by group health plan arrangements and by liability insurance (including self-insurance), no-fault insurance, and workers' compensation laws and plans. The law provides that, not withstanding any other provision of law, the Secretary of Health and Human Services may implement this provision by program instruction or otherwise. The Secretary has elected not to implement the provision through rulemaking and will implement by publishing instructions on a publicly available Web site and submitting an information collection request to OMB for review and approval of the associated information collection requirements.

Effective January 1, 2009, as required by the MMSEA, an entity serving as an insurer or third party administrator for a group health plan and, in the case of a group health plan that is self-insured and self-administered, a plan administrator or fiduciary must: (1) Secure from the plan sponsor and plan participants such information as the Secretary may specify to identify situations where the group health plan is a primary plan to Medicare; and (2) report such information to the Secretary in the form and manner (including frequency) specified by the Secretary.

Effective July 1, 2009, as required by the MMSEA, ''applicable plans,'' must: (1) Determine whether a claimant is entitled to Medicare benefits; and, if so, (2) report the identity of such claimant and provide such other information as the Secretary may require to properly coordinate Medicare benefits with respect to such insurance arrangements in the form and manner (including frequency) as the Secretary may specify after the claim is resolved through a settlement, judgment, award or other payment (regardless of whether or not there is a determination or admission of liability). Applicable plan refers to the following laws, plans or other arrangements, including the fiduciary or administrator for such law, plan or arrangement: (1) Liability insurance (including self-insurance); (2) No-fault

insurance; and (3) Workers' compensation laws or plans.

As indicated, the Secretary has elected to implement this provision by publishing instructions at a Web site established for such purpose. The Web site is *http://www.cms.hhs.gov/MandatoryInsRep/*. CMS shall use this Web site to publish preliminary guidance as well as the final instructions. The Web site also advises interested parties how to comment on the preliminary guidance. *Form Number:* CMS–10265 (OMB# 0938–New); *Frequency:* Yearly; *Affected Public:* Business or other for-profits, Not-for-profit institutions and State, Local or Tribal Governments; *Number of Respondents:* 290,404; *Total Annual Responses:* 6,920,504; *Total Annual Hours:* 2,120,478.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by September 30, 2008:

1. *Electronically*. You may submit your comments electronically to *http://www.regulations.gov*. Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail*. You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number___, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: July 2, 2008.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E8–17731 Filed 7–31–08; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0420]

Medical Device User Fee Rates for Fiscal Year 2009

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing the fee rates and payment procedures for medical device user fees for fiscal year (FY) 2009. The Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device User Fee and Modernization Act of 2002 (MDUFMA), the Medical Device User Fee Stabilization Act of 2005 (MDUFSA), and the Medical Device User Fee Amendments of 2007 (Title II of the Food and Drug Administration Amendments Act of 2007 (FDAAA)), authorizes FDA to collect user fees for certain medical device submissions, and annual fees both for certain periodic reports and for certain establishments subject to registration. The FY 2009 fee rates are provided in this notice. These fees apply from October 1, 2008, through September 30, 2009. To avoid delay in the review of your application, you should pay the fee before or at the time you submit your application to FDA. The fee you must pay is the fee that is in effect on the later of the date that your application is received by FDA or the date your fee payment is received. If you want to pay a reduced small business fee, you must qualify as a small business before you make your submission to FDA; if you do not qualify as a small business before you make your submission to FDA, you will have to pay the higher standard fee. This notice provides information on how the fees for FY 2009 were determined, the payment procedures you should follow, and how you may qualify for reduced small business fees.

FOR FURTHER INFORMATION CONTACT: *For information on MDUFMA*: Visit FDA's Web site, *http://www.fda.gov/cdrh/mdufma*.

For questions relating to this notice: David Miller, Office of Financial Management (HFA–100), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3917.

SUPPLEMENTARY INFORMATION:

I. Background

Section 738 of the act (21 U.S.C. 379j) establishes fees for certain medical device applications, submissions, supplements, and notices (for simplicity, this notice refers to these collectively as ''submissions''); for periodic reporting on class III devices; and for the registration of certain establishments. Under statutorily-defined conditions, a qualified applicant may receive a fee waiver or may pay a lower small business fee (see 21 U.S.C. 379j(d) and (e)).

Under the act, the fee rate for each type of submission is set at a specified percentage of the standard fee for a premarket application (a premarket application is a premarket approval application (PMA), a product development protocol (PDP), or a biologics licensing application (BLA)). The act specifies the standard fee for a premarket application for each year from FY 2008 through FY 2012; the standard fee for a premarket application received by FDA during FY 2009 is $200,725. From this starting point, this notice establishes FY 2009 fee rates for other types of submissions, and for periodic reporting, by applying criteria specified in the act.

The act specifies the annual fee for establishment registration for each year from FY 2008 through FY 2012; the registration fee for FY 2009 is $1,851. There is no reduction in the registration fee for small businesses. An establishment must pay the registration fee if it is any of the following types of establishments:

- *Manufacturer*. An establishment that makes by any means any article that is a device, including an establishment that sterilizes or otherwise makes such article for or on behalf of a specification developer or any other person.
- *Single-Use Device Reprocessor*. An establishment that performs manufacturing operations on a single-use device that has previously been used on a patient.
- *Specification Developer*. An establishment that develops specifications for a device that is distributed under the establishment's name but which performs no manufacturing, including an establishment that, in addition to developing specifications, also arranges for the manufacturing of devices labeled with another establishment's name by a contract manufacturer.

The fees for FY 2009 go into effect on October 1, 2008, and will remain in effect through September 30, 2009.

II. Fees for FY 2009

Under the act, all submission fees and the periodic reporting fee are set as a percent of the standard (full) fee for a premarket application (see 21 U.S.C. 379j(a)(2)(A)), and the act sets the

standard fee for a premarket application, including a biologic licensing application (BLA) and a premarket report, at $200,725 for FY 2009 (see 21 U.S.C. 379j(b); this is referred to as the ''base fee''). The fees set by reference to the base fee are—

- For a panel-track supplement, 75 percent of the base fee;
- For a 180-day supplement, 15 percent of the base fee;
- For a real-time supplement, 7 percent of the base fee;
- For a 30-day notice, 1.6 percent of the base fee;
- For a 510(k) premarket notification, 1.84 percent of the base fee;
- For a 513(g) request for classification information, 1.35 percent of the base fee; and
- For an annual fee for periodic reporting concerning a class III device, 3.5 percent of the base fee.

For all submissions other than a 510(k) premarket notification, a 30-day notice, and a 513(g) request for classification information, the small business fee is 25 percent of the standard (full) fee (see 21 U.S.C. 379j(d)(2)(C)). For a 510(k) premarket notification submission, a 30-day notice, and a 513(g) request for classification information, the small business fee is 50 percent of the standard (full) fee (see 21 U.S.C. 379j(e)(2)(C)). There is no small business rate for the annual establishment registration fee; all establishments pay the same fee. Table 1 of this document sets out the FY 2009 rates for all medical device fees.

TABLE 1—MEDICAL DEVICE FEES FOR FY 2009

Application Fee Type	Standard Fee, as a Percent of the Standard Fee for a Premarket Application	FY 2009 Standard Fee	FY 2009 Small Business Fee
Premarket application (a PMA submitted under section 515(c)(1) of the act (21 U.S.C. 360e(c)(1)), a PDP submitted under section 515(f) of the act, or a BLA submitted under section 351 of the Public Health Service (PHS) Act (42 U.S.C. 262))	Set in statute	$200,725	$50,181
Premarket report (submitted under section 515(c)(2) of the act)	100%	$200,725	$50,181
Efficacy supplement (to an approved BLA under section 351 of the PHS Act)	100%	$200,725	$50,181
Panel-track supplement	75%	$150,544	$37,636
180-day supplement	15%	$30,109	$7,527
Real-time supplement	7%	$14,051	$3,513
510(k) premarket notification submission	1.84%	$3,693	$1,847
30-day notice	1.6%	$3,212	$1,606
513(g) request for classification information	1.35%	$2,710	$1,355
Annual Fee Type			
Annual fee for periodic reporting on a class III device	3.5%	$7,025	$1,756
Annual establishment registration fee (to be paid by each establishment that is a manufacturer, a single-use device reprocessor, or a specification developer, as defined by 21 U.S.C. 379i(13))	Set in statute	$1,851	$1,851

III. How to Qualify as a Small Business for Purposes of Medical Device Fees

If your business has gross receipts or sales of no more than $100 million for the most-recent tax year, you may qualify for reduced small business fees. If your business has gross sales or receipts of no more than $30 million, you may also qualify for a waiver of the fee for your first premarket application (PMA, PDP, or BLA) or premarket report. You must include the gross receipts or sales of all of your affiliates along with your own gross receipts or sales when determining whether you meet the $100 million or $30 million threshold. If you want to pay the small business fee rate for a submission, or you want to receive a waiver of the fee for your first premarket application or premarket report, you should submit the materials showing you qualify as a small business 60 days before you send your submission to FDA. If you make a submission before FDA finds that you qualify as a small business, you must pay the standard fee for that submission.

If your business qualified as a small business for FY 2008, your status as a small business will expire at the close of business on September 30, 2008. You must re-qualify for FY 2009 in order to pay small business fees during FY 2009.

If you are a domestic (U.S.) business, and wish to qualify as a small business for FY 2009, you must submit the following to FDA:

(1) A completed FY 2009 MDUFMA Small Business Qualification Certification (Form FDA 3602). This form is provided in FDA's guidance document, ''FY 2009 Medical Device User Fee Small Business Qualification and Certification,'' available on FDA's Internet site at *http://www.fda.gov/cdrh/mdufma*. This form is *not* available separate from the guidance document.

(2) A certified copy of your Federal (U.S.) Income Tax Return for the most recent tax year. The most recent tax year will be 2008, except—

- If you submit your FY 2009 MDUFMA Small Business Qualification before April 15, 2009, and you have not yet filed your return for 2008, you may use tax year 2007.
- If you submit your FY 2009 MDUFMA Small Business Qualification on or after April 15, 2008, and have not yet filed your 2008 return because you obtained an extension, you may submit

your most-recent return filed prior to the extension.

(3) For each of your affiliates, either—

• If the affiliate is a domestic (U.S.) business, a certified copy of the affiliate's Federal (U.S.) income tax return for the most recent tax year, or

• If the affiliate is a foreign business and cannot submit a Federal (U.S.) Income Tax Return, a National Taxing Authority Certification completed by, and bearing the official seal of, the National Taxing Authority of the country in which the firm is headquartered. This certification must show the amount of gross receipts or sales for the most recent tax year, in both U.S. dollars and the local currency of the country, the exchange rate used in converting the local currency to U.S. dollars, and the dates of the gross receipts or sales collected. The applicant should also submit a statement signed by the head of the applicant's firm or by its chief financial officer that the applicant has submitted certifications for all of its affiliates, identifying the name(s) of each affiliate(s), or that the applicant has no affiliates. The National Taxing Authority is the foreign equivalent of the U.S. Internal Revenue Service.

If you are a foreign business, and wish to qualify as a small business for FY 2009, you must submit the following:

(1) A completed FY 2009 MDUFMA Foreign Small Business Qualification Certification (Form FDA 3602A). This form is provided in FDA's guidance document, ''FY 2009 Medical Device User Fee Small Business Qualification and Certification,'' available on FDA's Internet site at *http://www.fda.gov/cdrh/mdufma*. This form is *not* available separate from the guidance document.

(2) A National Taxing Authority Certification, completed by, and bearing the official seal of, the National Taxing Authority of the country in which the firm is headquartered. This Certification must show the amount of gross receipts or sales for the most recent tax year, in both U.S. dollars and the local currency of the country, the exchange rate used in converting the local currency to U.S. dollars, and the dates of the gross receipts or sales collected.

(3) For each of your affiliates, either—

• If the affiliate is a domestic (U.S.) business, a certified copy of the affiliate's Federal (U.S.) Income Tax Return for the most recent tax year (2007 or later), or

• If the affiliate is a foreign business and cannot submit a Federal (U.S.) Income Tax Return, a National Taxing Authority Certification completed by, and bearing the official seal of, the National Taxing Authority of the country in which the firm is headquartered. This certification must show the amount of gross receipts or sales for the most recent tax year, in both U.S. dollars and the local currency of the country, the exchange rate used in converting the local currency to U.S. dollars, and the dates for the gross receipts or sales collected. The applicant should also submit a statement signed by the head of the applicant's firm or by its chief financial officer that the applicant has submitted certifications for all of its affiliates, identifying the name(s) of each affiliate(s), or that the applicant has no affiliates. The National Taxing Authority is the foreign equivalent of the U.S. Internal Revenue Service.

IV. Procedures for Paying Application and Annual Report Fees

If your application or submission is subject to a fee and is received by FDA from October 1, 2008 through September 30, 2009, you must pay the fee in effect for FY 2009. The later of the date that the application or annual report is received in the reviewing center's document room or the date that the check is received by U.S. Bank determines whether the fee rates for FY 2008 or FY 2009 apply. FDA must receive the correct fee at the time that an application or annual report is submitted, or the application or annual report will not be accepted for filing or review.

FDA requests that you follow the steps below before submitting a medical device application or annual report subject to a fee. Please pay close attention to these procedures to ensure that FDA links the fee with the correct application. (Note: In no case should the check for the fee be submitted to FDA with the application.)

A. Step One—Secure a Payment Identification Number (PIN) and Medical Device User Fee Cover Sheet From FDA Before Submitting Either the Application or the Payment (Note: Both the FY 2008 and FY 2009 fee rates will be available on the Cover Sheet Web Site beginning on the date of publication of this notice, and the FY 2008 rates will no longer appear after September 30, 2008.)

Log onto the MDUFMA Web site at *http://www.fda.gov/oc/mdufma* and, under the forms heading, click on the link ''User Fee Cover Sheet.'' Complete the Medical Device User Fee Cover Sheet. Be sure you choose the correct application submission date range. (Two choices will be offered until October 1, 2008. One choice is for applications that will be received on or before September 30, 2008, which will be subject to FY 2008 fee rates. A second choice is for applications that will be received on or after October 1, 2008, which will be subject to FY 2009 fee rates.) After completing data entry, print a copy of the Medical Device User Fee Cover Sheet and note the unique PIN located in the upper right-hand corner of the printed cover sheet.

B. Step Two—Electronically Transmit a Copy of the Printed Cover Sheet With the PIN to FDA's Office of Financial Management

Once you are satisfied that the data on the cover sheet is accurate, electronically transmit that data to FDA according to instructions on the screen. Since electronic transmission is possible, applicants are required to set up a user account and use passwords to assure data security in the creation and electronic submission of cover sheets.

C. Step Three—Mail Payment and a Copy of the Completed Medical Device User Fee Cover Sheet to the St. Louis Address Specified in This Section

• Make the payment in U. S. currency by check, bank draft, or U.S. Postal money order payable to the Food and Drug Administration. (FDA's tax identification number is 53–0196965, should your accounting department need this information.)

• Please write your application's unique PIN, from the upper right-hand corner of your completed Medical Device User Fee Cover Sheet, on your check, bank draft, or U.S. Postal money order.

• Mail the payment and a copy of the completed Medical Device User Fee Cover Sheet to: Food and Drug Administration, P.O. Box 956733, St. Louis, MO, 63195–6733.

(Note: This address is for payments of application and annual report fees only and is not to be used for payment of annual establishment registration fees.)

If you prefer to send a check by a courier (such as FEDEX, DHL, UPS, etc.), the courier may deliver the check to: U.S. Bank, Attn: Government Lockbox 956733, 1005 Convention Plaza, St. Louis, MO 63101.

(Note: This address is for courier delivery only. Contact the U.S. Bank at 314–418–4821 if you have any questions concerning courier delivery.)

It is helpful if the fee arrives at the bank at least 1 day before the application arrives at FDA. FDA records the official application receipt date as the later of the following:

• The date the application was received by FDA.

• The date U.S. Bank receives the payment. U.S. Bank is required to notify FDA within 1 working day, using the PIN described previously in this document.

D. Step Four—Submit Your Application to FDA With a Copy of the Completed Medical Device User Fee Cover Sheet

Please submit your application and a copy of the completed Medical Device User Fee Cover Sheet to one of the following addresses:

• Medical device applications should be submitted to: Food and Drug Administration, Center for Devices and Radiological Health, Document Mail Center (HFZ–401), 9200 Corporate Blvd., Rockville, MD 20850.

• Biologic applications should be sent to: Food and Drug Administration, Center for Biologics Evaluation and Research, Document Control Center (HFM–99), suite 200N, 1401 Rockville Pike, Rockville, MD 20852–1448.

V. Procedures for Paying Annual Establishment Fees

If you are required to pay an annual establishment registration fee, you must pay for each establishment prior to registration. Payment must be submitted by first creating a Device Facility Use Fee (DFUF) order through the User Fee Web site at *https://fdasfinapp8.fda.gov/OA_HTML/fdaCAcdLogin.jsp*. You will be issued a PIN once you place your order. After payment has been processed, you will be issued a payment confirmation number (PCN). You will not be able to register your establishment if you do not have a PIN and a PCN. An establishment required to pay an annual establishment registration fee is not legally registered in FY 2009 until it has completed the steps in this section to register and pay any applicable fee (see 21 U.S.C. 379j(f)(2)).

A. Step One—Submit a Device Facility User Fee Order With a PIN From FDA Before Registering or Submitting Payment

To submit a DFUF order, you must create or have previously created a user account and password for the User Fee Web site listed in this section. After creating a user name and password, log onto the Annual Facility User Fee 2009 store. Complete the DFUF order by entering the number of establishments you are registering. Once you are satisfied that the data on the order is accurate, electronically transmit that data to FDA according to instructions on the screen. Print a copy of the final DFUF order and note the unique PIN located in the upper right-hand corner of the printed order.

B. Step Two—Pay for Your DFUF Order

Unless paying by credit card, all payments must be in U. S. currency and drawn on a U.S. bank. The DFUF order will include payment information, including details on how you can pay online using a credit card or electronic checks. Follow the instructions provided to make an electronic payment. If you prefer not to pay online, you may pay by a check, in U.S. dollars and drawn on a U.S. bank, mailed to: Food and Drug Administration, P.O. Box 70961, Charlotte, NC 28272–0961. (Note: This address is different from the address for payments of application and annual report fees and is to be used only for payment of annual establishment registration fees.)

If a check is sent by a courier that requests a street address, the courier can deliver the check to: Wachovia Bank, Attn: Food and Drug Administration—Lockbox 70961, rm. NC0810, 1525 West WT Harris Blvd., Charlotte, NC 28262. (Note: This Wachovia Bank address is for courier delivery only; do not send mail to this address.)

Please make sure that both of the following numbers are written on your check: (1) The FDA post office box number (P.O. Box 70961), and (2) the PIN that is printed on your order. A copy of your printed order should also be mailed along with your check. FDA's tax identification number is 53–0196965.

Wire transfers may also be used to pay annual establishment fees. For wire transfer information, please contact the user fee helpdesk at 301–827–9539 or *userfees@fda.gov*.

C. Step Three—Complete the Information Online to Update Your Establishment's Annual Registration for FY 2009, or to Register a New Establishment for FY 2009

Go to CDRH's Web site at *http://www.fda.gov/cdrh/reglistpage.html* and click the ''Electronic Registration and Listing System (FURLS)'' link on the left of the page. This opens up a new page with important information about FURLS. After reading this information click on the link at the bottom of the page. That takes you to an FDA Industry Systems page with tutorials that demonstrate how to create a new FURLS user account if your establishment did not create an account in FY 2008.

Enter your existing account ID and password to log into FURLS. From the FURLS/FDA Industry Systems menu, there will be a button that you will click to go to the Device Registration and Listing Module (DRLM) of FURLS. New establishments will need to register and existing establishments will update their annual registration using choices on the DRLM menu. Once you choose to register or update your annual registration the system will prompt you through the entry of information about your establishment and your devices. If you have any problems with this process, e-mail *reglist@cdrh.fda.gov* or call 240–276–0111 for assistance. (Note: This e-mail address and phone number are for assistance with establishment registration only, and not for any other aspects of medical device user fees.)

D. Step Four—Enter Your DFUF Order PIN and PCN

After completing your annual or initial registration and device listing, you will be prompted to enter your DFUF order PIN and PCN, when applicable. Fees are only required for those establishments defined in section I of this document.

Dated: July 28, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–17739 Filed 7–31–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0427]

Prescription Drug User Fee Rates for Fiscal Year 2009

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the rates for prescription drug user fees for fiscal year (FY) 2009. The Federal Food, Drug, and Cosmetic Act (the act), as amended by the Prescription Drug User Fee Amendments of 2007 (PDUFA IV) (Title 1 of the Food and Drug Administration Amendments Act of 2007 (FDAAA)), authorizes FDA to collect user fees for certain applications for approval of drug and biological products, on establishments where the products are made, and on such products. Base revenue amounts to be generated from PDUFA fees were established by PDUFA IV, with provisions for certain adjustments. Fee revenue amounts for applications, establishments, and products are to be established each year by FDA so that

one-third of the PDUFA fee revenues FDA collects each year will be generated from each of these categories. This notice establishes fee rates for FY 2009 for application fees for an application requiring clinical data ($1,247,200), for an application not requiring clinical data or a supplement requiring clinical data ($623,600), for establishment fees ($425,600), and for product fees ($71,520). These fees are effective on October 1, 2008, and will remain in effect through September 30, 2009. For applications and supplements that are submitted on or after October 1, 2008, the new fee schedule must be used. Invoices for establishment and product fees for FY 2009 will be issued in August 2008, using the new fee schedule.

FOR FURTHER INFORMATION CONTACT: David Miller, Office of Financial Management (HFA–100), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3917.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 735 and 736 of the act (21 U.S.C. 379g and 379h), establish three different kinds of user fees. Fees are assessed on the following: (1) Certain types of applications and supplements for approval of drug and biological products, (2) certain establishments where such products are made, and (3) certain products (section 736(a) of the act). When certain conditions are met, FDA may waive or reduce fees (section 736(d) of the act).

For FY 2008 through FY 2012, the base revenue amounts for the total revenues from all PDUFA fees are established by PDUFA IV. The base revenue amount for FY 2008 is to be adjusted for workload, and that adjusted amount becomes the base amount for the remaining 4 fiscal years. That adjusted base revenue amount is increased for drug safety enhancements by $10,000,000 in each of the subsequent 4 fiscal years, and the increased total is further adjusted each year for inflation and workload. Fees for applications, establishments, and products are to be established each year by FDA so that revenues from each category will provide one-third of the total revenue to be collected each year.

This notice uses the fee base revenue amount for FY 2008 published on October 12, 2007 (72 FR 58103), adjusts it for the 2009 drug safety increase (see section 736(b)(4) of the act), for inflation, and for workload, and then establishes the application, establishment, and product fees for FY 2009. These fees are effective on October 1, 2008, and will remain in effect through September 30, 2009.

II. Fee Revenue Amount for FY 2009

The total fee revenue amount for FY 2009 is $510,665,000, based on the fee revenue amount specified in the statute, including additional fee funding for drug safety and adjustments for inflation and changes in workload. The statutory amount and a one-time base adjustment are described in section II.A and II.B of this document. The adjustment for inflation is described in section II.C, and the adjustment for changes in workload in section II.D.

A. FY 2009 Statutory Fee Revenue Amounts Before Adjustments

PDUFA IV specifies that the fee revenue amount before adjustments for FY 2009 for all fees is $427,783,000 ($392,783,000 specified in section 736(b)(1) of the act, plus an additional $35,000,000 for drug safety in FY 2009 specified in section 736(b)(4) of the act).

B. Base Adjustment to Statutory Fee Revenue Amount

The statute also specifies that $354,893,000 of the base amount is to be further adjusted for workload increases through FY 2007 (see section 736(b)(1)(B) of the act). The adjustment on this amount is to be made in accordance with the workload adjustment provisions that were in effect for FY 2007, except that the adjustment for investigational new drug (IND) workload is based on the number of INDs with a submission in the previous 12 months, rather than on the number of new commercial INDs submitted in the same 12-month period.

For each fiscal year beginning in FY 2004, the Prescription Drug User Fee Amendments of 2002 (PDUFA III) provided that fee revenue amounts, after they had been adjusted for inflation, should be further adjusted to reflect changes in workload for the process for the review of human drug applications (see section 736(c)(2) of the act). The conference report accompanying PDUFA III, House of Representatives Report number 107–481, provides guidance on how the workload adjustment provision of PDUFA III is to be implemented. Following that guidance, FDA calculated the average number of each of the four types of submissions specified in the workload adjustment provision (human drug applications, commercial INDs, efficacy supplements, and manufacturing supplements) received over the 5-year period that ended on June 30, 2002 (base years), and the average number of each of these types of applications over the most recent 5-year period that ended June 30, 2007. PDUFA IV directs that this same method be used in making the workload adjustment apply to the 2008 statutory revenue amount, except that for this calculation the number of commercial INDs with a submission in the previous 12 months is used for each 12-month period rather than the number of new commercial INDs submitted (see section 736(b) of the act, as amended by PDUFA IV).

The results of these calculations are presented in Columns 1 and 2 of Table 1 of this document. Column 3 reflects the percent change in workload over the two 5-year periods. Column 4 shows the weighting factor for each type of application, estimating how much of the total FDA drug review workload was accounted for by each type of application in the table during the most recent 5 years. Column 5 of Table 1 of this document is the weighted percent change in each category of workload. This was derived by multiplying the weighting factor in each line in Column 4 by the percent change from the base years in Column 3. At the bottom right of the table the sum of the values in Column 5 is added, reflecting a total increase in workload of 11.73 percent when compared to the base years.

TABLE 1—SUMMARY WORKLOAD ADJUSTER CALCULATION TO BE APPLIED TO FY 2009 STATUTORY BASE

Application Type	Column 1 5-Year Average Base Years	Column 2 Latest 5-Year Average	Column 3 Percent Change	Column 4 Weighting Factor	Column 5 Weighted % Change
New drug applications (NDAs)/biologics license applications (BLAs)	119.6	123.8	3.5%	35.2%	1.24%
Active INDs	4751.8	5528.2	16.3%	44.2%	7.22%

TABLE 1—SUMMARY WORKLOAD ADJUSTER CALCULATION TO BE APPLIED TO FY 2009 STATUTORY BASE—Continued

Application Type	Column 1 5-Year Average Base Years	Column 2 Latest 5-Year Average	Column 3 Percent Change	Column 4 Weighting Factor	Column 5 Weighted % Change
Efficacy supplements	159.2	163.4	2.6%	7.4%	0.20%
Manufacturing supplements	2100.6	2589.2	23.3%	13.2%	3.07%
FY 2008 workload adjuster to be applied to the statutory base					11.73%

Increasing the PDUFA IV statutorily specified amount of $354,893,000 by the specified workload adjuster (11.73 percent) results in an increase of $41,629,000, rounded to the nearest thousand dollars. Adding this amount to the $427,783,000 statutorily specified amount from section II.A of this document, results in a total adjusted PDUFA IV base revenue amount of $469,412,000, before further adjustment for inflation and changes in workload after FY 2007.

C. Inflation Adjustment to FY 2009 Fee Revenue Amount

PDUFA IV provides that fee revenue amounts for each fiscal year after 2008 shall be adjusted for inflation. The adjustment must reflect the greater of: (1) The total percentage change that occurred in the Consumer Price Index (CPI) (all items; U.S. city average) during the 12-month period ending June 30 preceding the fiscal year for which fees are being set; (2) the total percentage pay change for the previous fiscal year for Federal employees stationed in the Washington, DC metropolitan area; or (3) the average annual change in cost, per full time equivalent (FTE) FDA position, of all personnel compensation and benefits paid for the first 5 of the previous 6 fiscal years. PDUFA IV provides for this annual adjustment to be cumulative and compounded annually after FY 2008 (see section 736(c)(1) of the act).

The first factor is the CPI increase for the 12-month period ending in June 2008. The CPI for June 2008 was 218.815, and the CPI for June 2007 was 208.352. (These CPI figures are available on the Bureau of Labor statistics Web site, *http://data.bls.gov/cgi-bin/surveymost?bls* by checking the first box under ''Price Indexes'' and then clicking ''Retrieve Data'' at the bottom of the page.) The CPI for June 2008 is 5.05 percent higher than the CPI for the previous 12-month period.

The second factor is the increase in pay for the previous fiscal year (FY 2008 in this case) for Federal employees stationed in the Washington, DC metropolitan area. This figure is published by the Office of Personnel Management, and found on their Web site, *http://www.opm.gov/oca/08tables/html/dcb.asp*, above the salary table. For FY 2008 it was 4.49 percent.

The third factor is the average change in FDA cost for compensation and benefits per FTE over the previous 5 of the most recent 6 fiscal years (FY 2002 through FY 2007). The data on total compensation paid and number of FTEs paid, from which the average cost per FTE can be derived, are published in FDA's Justification of Estimates for Appropriations Committees. Table 2 of this document summarizes that actual cost and FTE use data for the specified fiscal years, and provides the percent change from the previous fiscal year and the average percent change over the most 5 recent fiscal years, which is 5.64 percent.

TABLE 2—FDA PERSONNEL COMPENSATION AND BENEFITS (PC&B) EACH YEAR AND PERCENT CHANGE ($000)

Fiscal Year	2003	2004	2005	2006	2007	Annual Average Increase for Latest 5 Years
Total PC&B	$971,255	$1,042,749	$1,077,604	$1,114,704	$1,144,369	
Total FTEs	10257	10141	9910	9698	9569	
PC&B per FTE	$94.692	$102.825	$108.739	$114,942	$119.591	
% Change from Previous Year	4.09%	8.59%	5.75%	5.70%	4.05%	5.64%

Because the average change in pay per FTE (5.64 percent) is the highest of the three factors, it becomes the inflation adjustment for total fee revenue for FY 2009. Increasing the FY 2009 fee revenue base of $469,412,000 by 5.64 percent yields an inflation-adjusted fee revenue amount for FY 2009 of $495,887,000, rounded to the nearest thousand dollars, before addition of the FY 2009 workload adjustment.

D. Workload Adjustment to the FY 2009 Inflation Adjusted Fee Revenue Amount

For each fiscal year beginning in FY 2009, PDUFA IV provides that fee revenue amounts, after they have been adjusted for inflation, shall be further adjusted to reflect changes in workload for the process for the review of human drug applications (see section 736(c)(2) of the act). PDUFA IV continues the PDUFA III workload adjustment with modifications, and provides for a new additional adjustment for changes in review activity. PDUFA IV also specifies that for FY 2009 the additional adjustment for changes in review activity may not result in a total workload adjustment that is more than 2 percentage points higher than it would have been in the absence of the adjustment for changes in review workload (see section 736(c)(2)(B) of the act).

Therefore, FDA will first calculate the FY 2009 workload adjustment without the PDUFA IV adjustment for changes in review activity. Then FDA will apply

the adjustment for changes in review activity, to determine if the total workload adjustment is no more than 2 percentage points higher than it would have been in the absence of the adjustment for changes in review activity.

In calculating the FY 2009 workload adjustment without the PDUFA IV adjustment for changes in review activity, FDA will follow the guidance provided in the conference report accompanying the Prescription Drug User Fee Amendments of 2002, House of Representatives Report number 107–481, using active commercial INDs rather than newly submitted commercial INDs as the surrogate for IND workload, as specified by PDUFA IV.

FDA calculated the average number of each of the four types of applications specified in the workload adjustment provision: (1) Human drug applications, (2) active commercial investigational new drug applications (applications that have at least one submission during the previous 12 months), (3) efficacy supplements, and (4) manufacturing supplements received over the 5-year period that ended on June 30, 2007 (base years), and the average number of each of these types of applications over the most recent 5-year period that ended June 30, 2008.

The calculations are summarized in Table 3 of this document. The 5-year averages for each application category are provided in Column 1 (5-Year Average Base Years 2002–2007) and Column 2 (Latest 5-Year Average 2003–2008). Column 3 reflects the percent change in workload from Column 1 to Column 2. Column 4 shows the weighting factor for each type of application, estimating how much of the total FDA drug review workload was accounted for by each type of application in the table during the most recent 5 years. Column 5 of Table 1 is the weighted percent change in each category of workload. This was derived by multiplying the weighting factor in each line in Column 4 by the percent change from the base years in Column 3. At the bottom right of Table 3 of this document is the sum of the values in Column 5 that are added, reflecting an increase in workload of 2.98 percent for FY 2009 when compared to the base years, but before taking into account the impact of change in review activity.

TABLE 3—PRELIMINARY WORKLOAD ADJUSTER CALCULATION FOR FY 2009 WITHOUT ADJUSTMENT FOR CHANGES IN REVIEW ACTIVITY

Application Type	Column 1 5-Year Average Base Years 2002–2007	Column 2 Latest 5-Year Average 2003–2008	Column 3 Percent Change	Column 4 Weighting Factor	Column 5 Weighted % Change
NDAs/BLAs	123.8	128.4	3.7%	33.3%	1.24%
Active commercial INDs	5755.8	5897.6	2.5%	45.2%	1.11%
Efficacy supplements	163.4	173.0	5.9%	8.3%	0.49%
Manufacturing supplements	2589.2	2616.2	1.0%	13.2%	0.14%
FY 2009 workload adjuster without adjustment changes for review activity					2.98%

PDUFA IV specifies that FDA make additional adjustments for changes in review activities to the first two categories (human drug applications and active commercial INDs). These adjustments, specified under PDUFA IV, are summarized in the new Columns 2b and 2c in Table 4 of this document. The number in the NDAs/BLAs line of Column 2b of Table 4 of this document is the percent by which the average workload for meetings, annual reports, and labeling supplements for NDAs and BLAs has changed from the 5-year period 2002 through 2007 to the 5-year period 2003 through 2008. Likewise, the number in the active commercial INDs line of Column 2b of Table 4 of this document is the percent by which the workload for meetings and special protocol assessments for active commercial INDs has changed from the 5-year period 2002 through 2007 to the 5-year period 2003 through 2008. There is no entry in the last two lines of column 2b because the adjustment for changes in review workload does not apply to the workload for efficacy supplements and manufacturing supplements.

TABLE 4—FINAL WORKLOAD ADJUSTER CALCULATION FOR FY 2009 WITH ADJUSTMENT FOR CHANGES IN REVIEW ACTIVITY[1]

Application Type	Column 1 5-Year Average Base Years 2002–2007	Column 2a Latest 5-Year Average 2003–2008	Column 2b Adjustment for Changes in Review Activity	Column 2c is Column 2a Adjusted by Column 2b	Column 3 % Change (Column 1 to Column 2c or 2a)	Column 4 Weighting Factor	Column 5 Weighted % Change
NDAs/BLAs	123.8	128.4	-0.55%	127.7	3.1%	33.3%	1.05
Active commercial INDs	5755.8	5897.6	+0.39%	5920.6	2.9%	45.2%	1.31
Efficacy supplements	163.4	173.0	NA	173.3	5.9%	8.3%	0.49%
Manufacturing supplements	2589.2	2516.2	NA	2616.2	1.0%	13.2%	0.14%

TABLE 4—FINAL WORKLOAD ADJUSTER CALCULATION FOR FY 2009 WITH ADJUSTMENT FOR CHANGES IN REVIEW ACTIVITY[1]—Continued

Application Type	Column 1 5-Year Average Base Years 2002–2007	Column 2a Latest 5-Year Average 2003–2008	Column 2b Adjustment for Changes in Review Activity	Column 2c is Column 2a Adjusted by Column 2b	Column 3 % Change (Column 1 to Column 2c or 2a)	Column 4 Weighting Factor	Column 5 Weighted % Change
FY 2009 workload adjuster with adjustment changes for review activity							2.98%

[1] Numbers may not add due to rounding.

The 2009 workload adjuster with adjustment for changes in review activity at the bottom of Table 4 of this document is 2.98 percent exactly the same as the workload adjuster without those changes at the bottom of Table 3 of this document. Therefore the inflation-adjusted revenue amount of $495,887,000 from section II.B of this document will be multiplied by the 2009 workload adjuster of 2.98 percent, resulting in a total adjusted revenue amount in FY 2009 of $510,665,000, rounded to the nearest thousand dollars.

PDUFA specifies that one-third of the total fee revenue is to be derived from application fees, one-third from establishment fees, and one-third from product fees (see section 736(b)(2) of the act). Accordingly, one-third of the total revenue amount, or $ 170,222,000, rounded to the nearest thousand dollars, is the total amount of fee revenue that will be derived from each of these fee categories.

III. Application Fee Calculations

A. Application Fee Revenues and Application Fees

Application fees will be set to generate one-third of the total fee revenue amount, or $170,222,000, rounded to the nearest thousand dollars, in FY 2009, as calculated in section II.D of this document.

B. Estimate of Number of Fee-Paying Applications and Establishment of Application Fees

For FY 2008 through FY 2012, FDA will estimate the total number of fee-paying full application equivalents (FAEs) it expects to receive the next fiscal year by averaging the number of fee-paying FAEs received in the 5 most recent fiscal years. This use of the rolling average of the 5 most recent fiscal years is the same method that has applied for the last 6 years.

In estimating the number of fee-paying FAEs that FDA will receive in FY 2009, the 5-year rolling average for the most recent 5 years will be based on actual counts of fee-paying FAEs received for FY 2004 through FY 2008. For FY 2008, FDA is estimating the number of fee-paying FAEs for the full year based on the actual count for the first 9 months and estimating the number for the final 3 months, as we have done for the past 6 years.

Table 5 of this document shows, in Column 1, the total number of each type of FAE received in the first 9 months of FY 2008, whether fees were paid or not. Column 2 shows the number of FAEs for which fees were waived or exempted during this period, and Column 3 shows the number of fee-paying FAEs received through June 30, 2008. Column 4 estimates the 12-month total fee-paying FAEs for FY 2008 based on the applications received through June 30, 2008. All of the counts are in FAEs. A full application requiring clinical data counts as one FAE. An application not requiring clinical data counts as one-half an FAE, as does a supplement requiring clinical data. An application that is withdrawn, or refused for filing, counts as one-fourth of an FAE if the applicant initially paid a full application fee, or one-eighth of an FAE if the applicant initially paid one-half of the full application fee amount.

TABLE 5—FY 2008 FULL APPLICATION EQUIVALENTS RECEIVED THROUGH JUNE 30, 2008, AND PROJECTED THROUGH SEPTEMBER 30, 2008

Application or Action	Column 1 Total Received Through 6/30/2008	Column 2 Fee Exempt or Waived Through 6/30/2008	Column 3 Total Fee Paying Through 6/30/2008	Column 4 12-Month Fee-Paying Projection
Applications requiring clinical data	102.3	40.3	62.0	82.7
Applications not requiring clinical data	11.1	4.1	7.0	9.3
Supplements requiring clinical data	45.0	6.0	39.0	52.0
Withdrawn or refused to file	0.5	0	0.5	0.7
Total	158.9	50.4	108.5	144.7

In the first 9 months of FY 2008, FDA received 158.9 FAEs, of which 108.5 were fee-paying. Based on data from the last 9 fiscal years, on average, 25 percent of the applications submitted each year come in the final 3 months. Dividing 108.5 by 3 and multiplying by 4 extrapolates the amount to the full 12 months of the fiscal year and projects the number of fee-paying FAEs in FY 2008 at 144.7.

As Table 6 of this document shows, the average number of fee-paying FAEs received annually in the most recent 5-year period, and including our estimate for FY 2008, is 136.5 FAEs. FDA will set fees for FY 2009 based on this estimate as the number of FAEs that will pay fees.

TABLE 6—FEE-PAYING FULL APPLICATION EQUIVALENT—5-YEAR AVERAGE

Fiscal Year	2004	2005	2006	2007	2008	5-Year Average
Fee-Paying FAEs	145.1	121.5	136.7	134.4	144.7	136.5

The FY 2009 application fee is estimated by dividing the average number of full applications that paid fees over the latest 5 years, 136.5, into the fee revenue amount to be derived from application fees in FY 2009, $170,222,000. The result, rounded to the nearest $100, is a fee of $1,247,200 per full application requiring clinical data, and $623,600 per application not requiring clinical data or per supplement requiring clinical data.

IV. Fee Calculations for Establishment and Product Fees

A. Establishment Fees

At the beginning of FY 2008, the establishment fee was based on an estimate that 390 establishments would be subject to, and would pay, fees. By the end of FY 2008, FDA estimates that 435 establishments will have been billed for establishment fees, before all decisions on requests for waivers or reductions are made. As in previous years, FDA again estimates that a total of 25 establishment fee waivers or reductions will be made for FY 2008. In addition, FDA estimates that another 10 full establishment fees will be exempted this year based on the orphan drug exemption in the Food and Drug Administration Amendments Act of 2007 (FDAAA) (see section 736(k) of the act). Subtracting 35 establishments (25 plus the estimated 10 establishments under the orphan exemption) from 435 leaves a net of 400 fee-paying establishments. FDA will use 400 for its FY 2009 estimate of establishments paying fees, after taking waivers and reductions into account. The fee per establishment is determined by dividing the adjusted total fee revenue to be derived from establishments ($170,222,000) by the estimated 400 establishments, for an establishment fee rate for FY 2009 of $425,600 (rounded to the nearest $100).

B. Product Fees

At the beginning of FY 2008, the product fee was based on an estimate that 2,355 products would be subject to, and would pay, product fees. By the end of FY 2008, FDA estimates that 2,450 products will have been billed for product fees, before all decisions on requests for waivers or reductions are made. FDA assumes that there will be about 40 waivers and reductions granted, the same amount estimated last year. In addition, FDA estimates that another 30 product fees will be exempted this year based on the orphan drug exemption in FDAAA (see section 736(k) of the act). FDA estimates that 2,380 products will qualify for product fees in FY 2008, after allowing for waivers and reductions, including the orphan drug products eligible under the FDAAA exemption, and will use this number for its FY 2009 estimate. Accordingly, the FY 2009 product fee rate is determined by dividing the adjusted total fee revenue to be derived from product fees ($170,222,000) by the estimated 2,380 products for a FY 2009 product fee of $71,520 (rounded to the nearest $10).

V. Fee Schedule for FY 2009

The fee rates for FY 2009 are set out in Table 7 of this document.

TABLE 7

Fee Category	Fee Rates for FY 2009
APPLICATIONS	
Requiring clinical data	$1,247,200
Not requiring clinical data	$623,600
Supplements requiring clinical data	$623,600
ESTABLISHMENTS	$425,600
PRODUCTS	$71,520

VI. Implementation of Adjusted Fee Schedule

A. Application Fees

The appropriate application fee established in the new fee schedule must be paid for any application or supplement subject to fees under PDUFA that is received after September 30, 2008. Payment must be made in U.S. currency by check, bank draft, or U.S. postal money order payable to the order of the Food and Drug Administration. Please include the user fee ID number on your check. Your payment can be mailed to: Food and Drug Administration, P.O. Box 70963, Charlotte, NC 28272–0963.

If checks are to be sent by a courier that requests a street address, the courier can deliver the checks to: Wachovia Bank, Attn: Food and Drug Administration Lockbox 70963, 1525 West WT Harris Blvd., rm. NC0810, Charlotte, NC 28262. (Note: This Wachovia Bank address is for courier delivery only.)

Please make sure that the FDA post office box number (P.O. Box 70963) is written on the check. The tax identification number of the Food and Drug Administration is 53–0196965.

Wire transfer payment may also be used. The routing and transit number is 021030004 and the account number is 75060099.

B. Establishment and Product Fees

FDA will issue invoices for establishment and product fees for FY 2009 under the new fee schedule in August 2008. Payment will be due on October 1, 2008. FDA will issue invoices in November 2009 for any products and establishments subject to fees for FY 2009 that qualify for fees after the August 2008 billing.

Dated: July 28, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–17738 Filed 7–31–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Alcohol Abuse and Alcoholism.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C.,

as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Alcohol Abuse and Alcoholism.

Date: September 17–18, 2008.

Closed: September 17, 2008, 5:30 p.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Open: September 18, 2008, 9 a.m. to 3:30 p.m.

Agenda: Program reports and presentations.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Contact Person: Abraham P. Bautista, PhD, Executive Secretary, National Institute on Alcohol Abuse & Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm 3039, Rockville, MD 20852, 301–443–9737, *bautistaa@mail.nih.gov*.

Information is also available on the Institute's/Center's home page: *http://silk.nih.gov/silk/niaaa1/about/roster.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: July 25, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–17583 Filed 7–31–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council for Biomedical Imaging and Bioengineering.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or 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 grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering; NACBIB September 2008.

Date: September 16, 2008.

Open: 9 a.m. to 12:30 p.m.

Agenda: Report from the Institute Director, other Institute staff and presentations of working group reports.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Closed: 1:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Anthony Demsey, PhD, Director, National Institute of Biomedical Imaging and Bioengineering, 6701 Democracy Blvd., Room 241, Bethesda, MD 20892.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.nibib1.nih.gov/about/NACBIB/NACBIB.htm*, where an agenda and any additional information for the meeting will be posted when available.

Dated: July 25, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–17586 Filed 7–31–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel; K08, K23, K99–NEI Research Training Applications.

Date: August 8, 2008.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Samuel Rawlings, PhD, Chief, Scientific Review Branch, Division Of Extramural Research, National Eye Institute, 5635 Fishers Lane, Suite 1300 Msc 9300, Bethesda, MD 20892–9300, 301–451–2020, *rawlings@nei.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Eye Institute Special Emphasis Panel; NEI Conference Grant Review.

Date: August 26, 2008.

Time: 12 p.m. to 2 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: Samuel Rawlings, PhD, Chief, Scientific Review Branch, Division Of Extramural Research, National Eye Institute, 5635 Fishers Lane, Suite 1300 Msc 9300, Bethesda, MD 20892–9300, 301–451–2020, *rawlings@nei.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: July 25, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–17584 Filed 7–31–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908), on September 30, 1997 (62 FR 51118), and on April 13, 2004 (69 FR 19644).

A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov*.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1042, One Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Mandatory Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards that laboratories must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Mandatory Guidelines dated April 13, 2004 (69 FR 19644), the following laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016, (Formerly: Bayshore Clinical Laboratory).

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150.

Aegis Sciences Corporation, 345 Hill Ave., Nashville, TN 37210, 615–255–2400, (Formerly: Aegis Analytical Laboratories, Inc.).

Baptist Medical Center-Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917.

Diagnostic Services, Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 239–561–8200/800–735–5416.

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602, 229–671–2281.

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310.

DynaLIFE Dx,* 10150–102 St., Suite 200, Edmonton, Alberta, Canada T5J 5E2, 780–451–3702/800–661–9876, (Formerly: Dynacare Kasper Medical Laboratories).

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609.

Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630.

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Laboratory Specialists, Inc.).

Kroll Laboratory Specialists, Inc., 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130, (Formerly: Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.).

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group),

Laboratory Corporation of America Holdings, 13112 Evening Creek Drive, Suite 100, San Diego, CA 92128, 858–668–3710/800–882–7272, (Formerly: Poisonlab, Inc.)

Laboratory Corporation of America Holdings, 550 17th Ave., Suite 300, Seattle, WA 98122, 206–923–7020/800–898–0180, (Formerly: DrugProof, Division of Dynacare/Laboratory of Pathology, LLC; Laboratory of Pathology of Seattle, Inc.; DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center.)

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

MAXXAM Analytics Inc.,* 6740 Campobello Road, Mississauga, ON, Canada L5N 2L8, 905–817–5700 (Formerly: NOVAMANN (Ontario), Inc.)

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244.

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology

Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088.
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515.
One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).
Oregon Medical Laboratories, 123 International Way, Springfield, OR 97477, 541–341–8092.
Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory).
Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7.
Phamatech, Inc., 10151 Barnes Canyon Road, San Diego, CA 92121, 858–643–5555.
Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590/800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).
Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).
Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 866–370–6699/818–989–2521, (Formerly: SmithKline Beecham Clinical Laboratories).
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227.
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176 x276.
Southwest Laboratories, 4645 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507/800–279–0027.
Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–364–7400, (Formerly: St. Lawrence Hospital & Healthcare System).
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052.
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573–882–1273.
Toxicology Testing Service, Inc., 5426 NW. 79th Ave., Miami, FL 33166, 305–593–2260.
US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085.

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 13, 2004 (69 FR 19644). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Elaine Parry,

Acting Director, Office of Program Services, SAMHSA.

[FR Doc. E8–17654 Filed 7–31–08; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

National Protection and Programs Directorate; Submission for Review: CAPTAP Train the Trainer Survey 1670–NEW

AGENCY: National Protection and Programs Directorate, Infrastructure Protection, DHS.

ACTION: 60-Day Notice and request for comments.

SUMMARY: The Department of Homeland Security (DHS) invites the general public and other federal agencies the opportunity to comment on new information collection request 1670–NEW, CAPTAP Train the Trainer Survey. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), DHS is soliciting comments for this collection.

DATES: Comments are encouraged and will be accepted until September 30, 2008. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to Department of Homeland Security, National Protection and Programs Directorate, Infrastructure Protection, Infrastructure Information Collection Division, Attn: Veronica Heller, Team Lead, Planning and Policy Integration, Ballston One, 4601 N. Fairfax Dr., 5th Floor, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Department of Homeland Security, National Protection and Programs Directorate, Infrastructure Protection, Infrastructure Information Collection Division, Attn: Veronica Heller, Team Lead, Planning and Policy Integration, Ballston One, 4601 N. Fairfax Dr., 5th Floor, Arlington, VA 22203.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate, Infrastructure Protection.

Title: CAPTAP Train the Trainer Survey.

OMB Number: 1670–NEW.

Frequency: Once.

Affected Public: Federal, State, Local, Tribal.

Number of Respondents: 150.

Estimated Time per Respondent: 12 minutes.

Total Burden Hours: 30 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintaining): None.

Description: The C/ACAMS program uses the CAPTAP Train the Trainer survey to assess participant satisfaction with the training. The survey supports data-based decision-making by identifying actionable training data to reallocate resources to address it. The Train the Trainer survey collects data about participants satisfaction with the instructors, materials, course curriculum, activities and applicability to effect cost savings by prioritizing training improvements.

Dated: July 25, 2008.

Matt Coose,

Acting Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. E8–17644 Filed 7–31–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2008–0075]

Science and Technology Directorate; Submission for Review; Information Collection Request for the DHS S&T Tech Clearinghouse Program

AGENCY: Science and Technology Directorate, DHS.

ACTION: 30-day Notice and request for comment.

SUMMARY: The Department of Homeland Security (DHS) invites the general public to comment on new data collection forms for the Tech Clearinghouse program: Consent Form, Entrance Form, Structured Assessment Case #1, Structured Assessment Case #2, Structured Assessment Case #3, Structured Assessment Case #4, and Exit Form. The Homeland Security Act of 2002 requires the Department of Homeland Security (DHS) Science and Technology Directorate (S&T) to establish a Technology Clearinghouse to encourage and support innovative technical solutions to enhance homeland security and the mission of the Department (Pub. L. 107–296, Section 313). This requirement responds to long-standing requests by the first responder community to create a resource for information and technology that would assist them in support of their mission. In order to assess the current version of the DHS Tech Clearinghouse, a National Online Electronic Assessment (NOEA) will be administered. This notice and request for comments is required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). Previously, a 60-day Notice for public comment was published on May 19, 2008.

DATES: Comments are encouraged and will be accepted until September 2, 2008.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Desk Officer for the Department of Homeland Security, Science & Technology Directorate, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974. Please include docket number [DHS–2008–0075] in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Michael Bowerbank (202) 254–6895 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: The Tech Clearinghouse National On-line Assessment (NOEA) will collect information via a secure Web site. The data will be used by DHS S&T to: (1) Assess the overall usability of the Tech Clearinghouse, (2) Assess the specific functions of the Tech Clearinghouse, (3) Assess the relevancy and usefulness of the content of the Tech Clearinghouse to first responders, (4) Assess the ease with which users navigate the Tech Clearinghouse, and (5) Provide general feedback on the Tech Clearinghouse.

Information technology will be used in the collection of this information to reduce the data gathering and records management burden. The National Online Electronic Assessment will be conducted with approximately 100 currently employed or recently retired individuals from the first responder disciplines. An invitation to participate in the National Online Electronic Assessment will be distributed through sources such as the First Responder Technologies (R-Tech) User Working Group (UWG), the R-Tech Newsletter, and national and state-level associations representing all first responder disciplines. The sources will announce the opportunity for participation in the NOEA.

The assessment will be completely Web-based. DHS S&T will provide a secure Web site, through which individuals can participate in the assessment. DHS has opted to conduct this collection electronically in order to minimize the burden on participants. Individuals that choose to participate will take part in the assessment over a 4-week period, at locations of their choice where an Internet connection is available. The assessment will require a total of two and a half (2.5) hours of the respondent's time, thus presenting a minimal burden to each respondent.

Participants will be asked to read and sign an electronic consent form granting their consent to participate in the assessment. Participants will then complete an online Entrance Form, which addresses their familiarity with computers, computer use in employment and leisure, common Web sites they visit and/or use, and expectations of the Tech Clearinghouse. They will then utilize and assess the Tech Clearinghouse by conducting specified and general searches and providing feedback through online assessment instruments (Structured Assessment Cases). After completing the Structured Assessment Cases, participants will complete an online Exit Form, which addresses the participant's satisfaction with and the overall usability of the Tech Clearinghouse and specific functions included in the Tech Clearinghouse. The electronic data collection forms will standardize the collection of information that is both necessary and sufficient for assessing the Tech Clearinghouse. All online assessment instruments were created using *mrInterview™ 4.0* software, which works in conjunction with the Statistical Package for the Social Sciences (SPSS™). Data collected from online assessment instruments will be analyzed using SPSS™ 15.0. Data will be stored in password-protected computers accessible only to authorized personnel, and no data will be associated in any way with personally identifiable information (PII).

Overview of This Information Collection

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* Tech Clearinghouse.

Agency Form Number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection: DHS Science & Technology Directorate.

(3) *Affected public who will be asked or required to respond, as well as a brief abstract:* Individuals; the data will be gathered from individuals who receive

an invitation to participate in the National Online Electronic Assessment through sources such as the First Responder Technologies (R-Tech) User Working Group (UWG), the R-Tech Newsletter, and national and state-level associations representing all first responder disciplines.

(4) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

a. *Estimate of the total number of respondents:* 100.

b. *An estimate of the time for an average respondent to respond:* 2.5 burden hours.

Dated: July 18, 2008.

Kenneth D. Rogers,

Chief Information Officer, Science and Technology Directorate.

[FR Doc. E8–17617 Filed 7–31–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1771–DR]

Illinois; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Illinois (FEMA–1771–DR), dated June 24, 2008, and related determinations.

DATES: *Effective Date:* July 22, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective July 22, 2008.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–17685 Filed 7–31–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1773–DR]

Missouri; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Missouri (FEMA–1773–DR), dated June 25, 2008, and related determinations.

DATES: *Effective Date:* July 25, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Missouri is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 25, 2008.

Audrain, Carroll, Chariton, Christian, Howard, Macon, Miller, Morgan, Pettis, Ray, Shelby, and Sullivan Counties for Public Assistance. Linn, Stone, Taney, and Vernon Counties for Public Assistance (already designated for Individual Assistance.)

Nodaway County for Public Assistance (already designated for Individual Assistance and emergency protective measures [Category B], limited direct Federal assistance, under the Public Assistance program.)

Cape Girardeau County for Public Assistance (already designated for emergency protective measures [Category B], limited direct Federal assistance, under the Public Assistance program.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidential Declared Disaster Assistance to Individuals and Households—Other Needs, 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–17691 Filed 7–31–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1773–DR]

Missouri; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Missouri (FEMA–1773–DR), dated June 25, 2008, and related determinations.

DATES: *Effective Date:* July 18, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective July 18, 2008.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–17692 Filed 7–31–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1768–DR]

Wisconsin; Amendment No. 14 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Wisconsin (FEMA–1768–DR), dated June 14, 2008, and related determinations.

DATES: *Effective Date:* July 25, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Wisconsin is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 14, 2008.

Green County for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–17682 Filed 7–31–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1768–DR]

Wisconsin; Amendment No. 13 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Wisconsin (FEMA–1768–DR), dated June 14, 2008, and related determinations.

DATES: *Effective Date:* July 25, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective July 25, 2008.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidential Declared Disaster Assistance to Individuals and Households—Other Needs, 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–17690 Filed 7–31–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1779–DR]

Nebraska; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Nebraska (FEMA–1779–DR), dated July 18, 2008, and related determinations.

DATES: *Effective Date:* July 18, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 18, 2008, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Nebraska resulting from severe storms, straight-line winds, and flooding on June 27, 2008, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Nebraska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, except for any particular projects that are eligible for a higher Federal cost-sharing percentage under the FEMA Public Assistance Pilot Program instituted pursuant to 6 U.S.C. 777. If Other Needs Assistance under Section 408 of the Stafford Act is later warranted, Federal funding under that program also will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Willie G. Nunn, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

The following areas of the State of Nebraska have been designated as adversely affected by this declared major disaster:

Dodge, Douglas, Sarpy, and Saunders Counties for Public Assistance.

All counties within the State of Nebraska are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidential Declared Disaster Assistance to Individuals and Households—Other Needs, 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–17688 Filed 7–31–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1780–DR]

Texas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Texas (FEMA–1780–DR), dated July 24, 2008, and related determinations.

DATES: *Effective Date:* July 24, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 24, 2008, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Texas resulting from Hurricane Dolly beginning on July 22, 2008, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Texas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program in the designated areas; Hazard Mitigation throughout the State; and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments (PDAs), unless you determine that the incident is of such unusual severity and magnitude that PDAs are not required to determine the need for supplemental Federal assistance pursuant to 44 CFR 206.33(d).

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs, except for any particular projects that are eligible for a higher Federal cost-sharing percentage under the FEMA Public Assistance Pilot Program instituted pursuant to 6 U.S.C. 777. If Other Needs Assistance is later warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Sandy Coachman, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Texas to have been affected adversely by this declared major disaster:

Aransas, Bexar, Brooks, Calhoun, Cameron, Hidalgo, Jim Wells, Kenedy, Kleberg, Nueces, Refugio, San Patricio, Starr, Victoria, and Willacy Counties for Public Assistance Category B (emergency protective measures), including direct Federal assistance.

All counties within the State of Texas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–17686 Filed 7–31–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2004–0004]

[Z–RIN 1660–ZA02]

Planning Guidance for Protection and Recovery Following Radiological Dispersal Device (RDD) and Improvised Nuclear Device (IND) Incidents

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of final guidance.

SUMMARY: The Department of Homeland Security (DHS) is issuing final guidance entitled, ''Planning Guidance for Protection and Recovery Following Radiological Dispersal Device (RDD) and Improvised Nuclear Device (IND) Incidents'' (the Guidance). This Guidance is intended for Federal agencies, State and local governments, emergency management officials, and the general public who should find it useful in developing plans for responding to an RDD or IND incident. The Guidance recommends ''protective action guides'' (PAGs) to support decisions about actions that should be taken to protect the public and emergency workers when responding to or recovering from an RDD or IND incident. The Guidance outlines a process to implement the recommendations, discusses existing operational guidelines that should be useful in the implementation of the PAGs and other response actions, and encourages federal, state and local emergency response officials to use these guidelines to develop specific operational plans and response protocols for protection of emergency workers responding to catastrophic incidents involving high levels of radiation and/or radioactive contamination.

DATES: This notice is effective August 1, 2008.

FOR FURTHER INFORMATION CONTACT: Craig Conklin, Director Sector Specific Agency Executive Management Office, Office of Infrastructure Protection,

Department of Homeland Security at 703–235–2850 (phone), or *craig.conklin@dhs.gov* (e-mail), or, John MacKinney, Deputy Director, Nuclear/Radiological/Chemical Threats and Science and Technology Policy, Office of Policy, Department of Homeland Security, at (202) 447–3885 (phone), or *john.mackinney@dhs.gov* (e-mail).

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Background

This Guidance was developed to address the critical issues of protective actions and protective action guides (PAGs) to protect human health and to mitigate the effects caused by terrorists' use of a Radiological Dispersal Device (RDD) or Improvised Nuclear Device (IND). This document provides guidance for site cleanup and recovery following an RDD or IND incident, and affirms the applicability of existing 1992 EPA PAGs for radiological emergencies.

The development of this Guidance was directed by the White House, Office of Science and Technology Policy, through the National Science and Technology Council, Committee on Homeland and National Security, Subcommittee on Standards (SoS). In 2003, the SoS convened a senior level Federal working group, chaired by DHS, to develop guidance for response and recovery following a radiological dispersal device (RDD) or improvised nuclear device (IND) incident. The working group consisted of senior subject matter experts in radiological/nuclear emergency preparedness, response, recovery, and incident management. The following Federal departments and agencies were represented on the working group: DHS, EPA, Department of Commerce (DOC), Department of Energy (DOE), Department of Defense (DOD), Department of Labor (DOL), Department of Health and Human Services (HHS), and Nuclear Regulatory Commission (NRC).

On January 3, 2006, DHS issued the ''Preparedness Directorate; Protective Action Guides for Radiological Dispersal Device (RDD) and Improvised Nuclear Device (IND) Incidents; Notice'' (71 FR 174, Jan. 3, 2006), and requested public comments on this interim Guidance. Some changes to the Guidance were made as a result of these comments. A summary of the comments on the interim Guidance document and responses are available at Docket ID No. FEMA–2004–0004 at *http://www.regulations.gov*.

In addition to the issuance of this Guidance, in response to interagency working group discussions and public comments, further guidance will be provided for the consequences that would be unique to an IND attack. This Guidance was not written to provide specific recommendations for a nuclear detonation (IND), but to consider the applicability of existing PAGs to RDDs and INDs. In particular, it does not consider very high doses or dose rate zones expected following a nuclear weapon detonation and other complicating impacts that can significantly affect life-saving outcomes, such as severely damaged infrastructure, loss of communications, water pressure, and electricity, and the prevalence of secondary hazards. Scientifically sound recommendations for responders are a critical component of post-incident life-saving activities, including implementing protective orders, evacuation implementation, safe responder entry and operations, and urban search and rescue and victim extraction. In the interim, this Guidance should be used until the IND guidance is developed.

The intended audience of this document are Federal, State, and local radiological emergency response and incident management officials. This Guidance is not intended to impact site cleanups occurring under other statutory authorities such as the Environmental Protection Agency's (EPA) Superfund program, the Nuclear Regulatory Commission's (NRC) decommissioning program, or other Federal and State cleanup programs. In addition, the scope of this Guidance does not include situations involving U.S. nuclear weapons accidents.

In addition to the issuance of this Guidance, further guidance is being planned for the devastating consequences that would be unique to INDs. In the interim, the present document will provide general RDD and IND guidance.

By agreement with the Environmental Protection Agency (EPA), the Guidance being published today is final and its substance will be incorporated without change into the revision of the 1992 EPA Manual of Protective Actions Guides and Protective Actions for Nuclear Incidents (the PAG Manual). This notice of final guidance will therefore sunset upon publication of the new EPA PAG Manual (see, *http://www.epa.gov/radiation/rert/pags.html*). The reader will then be directed to the

new EPA PAG Manual, where these provisions may be found.

(a) Introduction

For the early and intermediate phases of response, this document presents levels of projected radiation dose at which the Federal Government recommends that actions be considered to avoid or reduce adverse public health consequences from an RDD or IND incident. This document incorporates guidance and regulations published by the EPA, Food and Drug Administration (FDA), and the Occupational Safety and Health Administration (OSHA). For the late phase of the response, this Guidance presents a process for establishing appropriate exposure levels based on site-specific circumstances. This Guidance addresses key radiological protection questions at each stage of an RDD or IND incident (early, intermediate, and late) and constitutes advice by the Federal government to Federal, State, and local decision makers.

The objective of the Guidance is to aid decision makers in protecting the public, first responders, and other emergency workers from the effects of radiation, and cleaning up the affected area, while balancing the adverse social and economic impacts following an RDD or IND incident. Restoring the normal operation of critical infrastructure, services, industries, business, and public activities as soon as possible can minimize adverse social and economic impacts.

This Guidance for RDD and IND incidents is not a set of absolute standards. The guides are not intended to define ''safe'' or ''unsafe'' levels of exposure or contamination; rather they represent the approximate levels at which the associated protective actions are justified. The Guidance provides Federal, State and local decision makers the flexibility to be more or less restrictive, as deemed appropriate based on the unique characteristics of the incident and local considerations.

This RDD/IND Guidance can be used to select actions to prepare for, respond to, and recover from the adverse effects that may exist during any phase of a terrorist incident—the early (emergency) phase, the intermediate phase, or the late phase. There may be an urgent need to evacuate people; there may also be an urgent need to restore the services of critical infrastructure (*e.g.,* roads, rail lines, airports, electric power, water, sewage, medical facilities, and businesses) in the hours and days following the incident—thus, some response decisions must be made quickly. If the decisions affecting the recovery of critical infrastructure are not made quickly, the disruption and harm caused by the incident could be inadvertently and unnecessarily increased. Failure to restore important services rapidly could result in additional adverse public health and welfare impacts that could be more significant than the direct radiological impacts.

(b) Characteristics of RDD and IND Incidents

A radiological incident is defined as an event or series of events, deliberate or accidental, leading to the release, or potential release, into the environment of radioactive material in sufficient quantity to warrant consideration of protective actions. Use of an RDD or IND is an act of terror that results in a radiological incident.

(1) Radiological Dispersal Device (RDD)

An RDD poses a threat to public health and safety through the malicious spread of radioactive material by some means of dispersion. The mode of dispersal typically conceived as an RDD is an explosive device coupled with radioactive material. The explosion adds an immediate threat to human life and property. Other means of dispersal, both passive and active, may be employed.

There is a wide range of possible consequences that may result from an RDD, depending on the type and size of the device and how dispersal is achieved. The consequences of an RDD may range from a small, localized area, such as a single building or city block, to large areas, conceivably several square miles. However, most experts agree that the likelihood of impacting a very large area is low. In most plausible scenarios, the radioactive material would not result in acutely harmful radiation doses, and the primary public health concern from those materials would be increased risk of cancer to exposed individuals. Hazards from fire, smoke, shock (physical, electrical, or thermal), shrapnel (from an explosion), hazardous materials, and other chemical or biological agents may also be present.

(2) Improvised Nuclear Device (IND)

An IND is an illicit nuclear weapon bought, stolen, or otherwise originating from a nuclear State, or a weapon fabricated by a terrorist group from illegally obtained fissile nuclear weapons material that produces a nuclear explosion. The nuclear yield achieved by an IND produces extreme heat, powerful shockwaves, and prompt radiation that would be acutely lethal for a significant distance. It also produces radioactive fallout, which may spread and deposit over very large areas. If a nuclear yield is not achieved, the result would likely resemble an RDD in which fissile weapons material was utilized.

(3) Differences Between Acts of Terror and Accidents

Most radiological emergency planning has been conducted to respond to potential nuclear power plant accidents. RDD and IND incidents differ from a nuclear power plant accident in several ways, and response planning should take these differences into account. First, the severity of an IND incident would be dramatically greater than any nuclear power plant accident. An IND would have grave consequences for the human population and create a large radius of severe damage from blast and fires, which could not occur in a nuclear power plant accident.

Second, the radiological release from an RDD or IND may start without any advance warning and would likely have a relatively short duration. In a major nuclear power plant accident, there is likely to be several hours or days of warning before the release starts, and the release is likely to be drawn out over many hours. This difference means that most early phase, and some intermediate phase, protective action decisions, which may be made in a timely fashion during power plant incidents, must be made much more quickly (and with less information) in an RDD or IND incident if they are to be effective.

Third, an RDD or IND incident is more likely to occur in a major city center with a large population. Because of the rural setting in which many nuclear facilities are located, the lower number and density of people affected by a nuclear plant incident would be less, making evacuations much more manageable, and the amount of critical infrastructure impacted is also likely to be smaller.

Fourth, large nuclear facilities have detailed emergency plans developed over years that are periodically exercised including specified protective actions, evacuation routes, and methods to quickly alert the public of the actions to take. This would not be the case for an RDD or IND incident. This level of radiological emergency planning typically does not exist in most cities and towns without nearby nuclear facilities.

Fifth, the radioactive material releases from a nuclear power plant incident would be well known in advance based on reactor operational characteristics

whereas releases associated with an RDD or IND would not.

Sixth, in an act of terrorism, the incident scene becomes a crime scene. As such, the crime scene must be preserved for forensic investigation. This may impact emergency responders during the early and intermediate phases of response. It should be noted that other personnel responding to the incident (*i.e.,* law enforcement, security personnel) will be involved in addition to emergency responders.

(c) Phases of Response

Typically, the response to an RDD or IND incident can be divided into three time phases—the early phase, the intermediate phase, and the late phase—that are generally accepted as being common to all radiological incidents. The phases represent time periods in which response officials would be making public health protection decisions. Although these phases cannot be represented by precise time periods, and may overlap, they provide a useful framework for the considerations involved in emergency response planning.

(1) Early Phase

The early phase (or emergency phase) is the period at the beginning of the incident when immediate decisions for effective protective actions are required, and when actual field measurement data generally are not available. Exposure to the radioactive plume, short-term exposure to deposited radioactive materials, and inhalation of radioactive material are generally taken into account when considering protective actions for the early phase. The response during the early phase includes initial emergency response actions to protect public health and welfare in the short term, considering a time period for protective actions of hours to a few days. Priority should be given to lifesaving and first-aid actions. In general, early phase protective actions should be taken very quickly, and the protective action decisions can be modified later as more information becomes available. If an explosive RDD is deployed without warning, however, there may be no time to take protective actions to significantly reduce plume exposure. Also, in the event of a covert dispersal, discovery or detection may not occur for days or weeks, allowing contamination to be dispersed broadly by foot, vehicular traffic, wind, rain, or other forces.

If an IND explodes, there may only be time to make early phase protective action recommendations (*e.g.*, evacuation, or shelter-in-place) many miles from the explosion to protect areas against exposure to fallout. Areas close to the explosion will be devastated, and communications and access will be extremely limited. Assistance will likely not be forthcoming or even possible for some hours. Self-guided protective actions are likely to be the best recourse for most survivors (*e.g.*, evacuation perpendicular to the plume movement if it can be achieved quickly, or sheltering in a basement or large building for a day or more after the incident [1]). Due to the lack of communication and access, outside guidance and assistance to these areas can be expected to be delayed. Therefore, response planning and public outreach programs are critical measures to meet IND preparedness objectives.

(2) Intermediate Phase

The intermediate phase of the response may follow the early phase response within as little as a few hours. The intermediate phase of the response is usually assumed to begin after the incident source and releases have been brought under control and protective action decisions can be made based on measurements of exposure and radioactive materials that have been deposited as a result of the incident. Activities in this phase typically overlap with early and late phase activities, and may continue for weeks to many months, until protective actions can be terminated.

During the intermediate phase, decisions must be made on the initial actions needed to recover from the incident, reopen critical infrastructure, and return to a state of relatively normal activity. In general, intermediate phase decisions should consider late phase response objectives. However, some intermediate phase decisions will need to be made quickly (*i.e.*, within hours) and should not be delayed by discussions on what the more desirable permanent decisions will be. Local officials must weigh public health and welfare concerns, potential economic effects, and many other factors when making decisions. For example, it can be expected that hospitals and their access roads will need to remain open or be reopened quickly. These interim decisions can often be made with the acknowledgement that further work may be needed as time progresses.

(3) Late Phase

The late phase is the period when recovery and cleanup actions designed to reduce radiation levels in the environment to acceptable levels are commenced. This phase ends when all the remediation actions have been completed. With additional time and increased understanding of the situation, there will be opportunities to involve key stakeholders in providing sound, cost-effective cleanup recommendations that are protective of human health and the environment. Generally, early (or emergency) phase decisions will be made directly by elected public officials, or their designees, with limited stakeholder involvement due to the need to act within a short timeframe. Long-term decisions should be made with stakeholder involvement, and can also include incident-specific technical working groups to provide expert advice to decision makers on alternatives, costs, and impacts. The relationship between typical protective actions and the phases of the incident response are outlined in Figure 1. There is overlap between the phases; this framework should be used to inform planning and decision-making.

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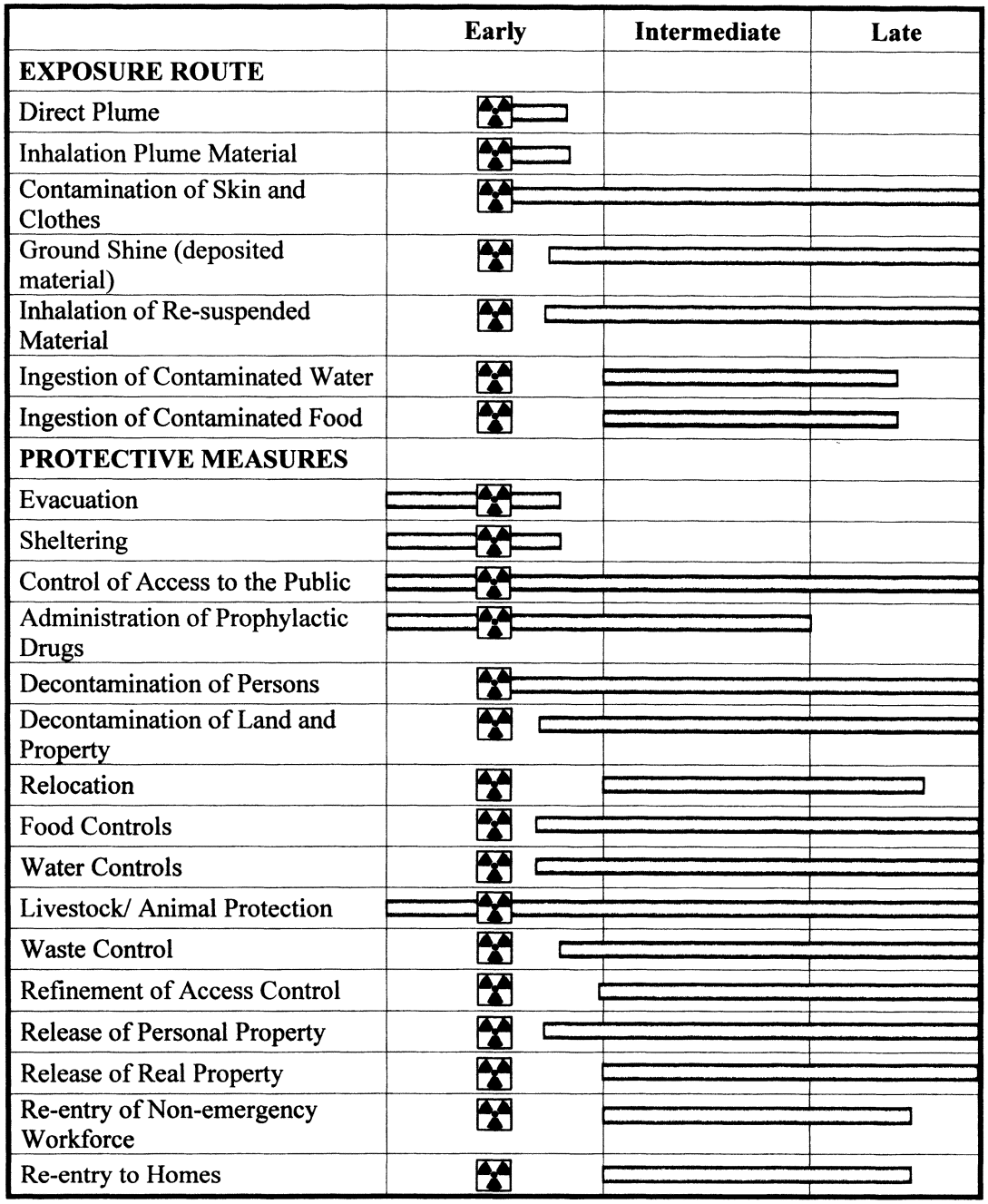
[1] Additional protective action guides and recommendations are needed for the close-in zones after an IND. A follow-on Federal effort is underway to address this critical need.

Figure 1.—Relationship between Exposure Routes, Protective Measures, & Timeframes for Effects[a, b]



Radiological release incident occurs Exposure or action occurs

[a] For some activities, the figure indicates that protective actions may be taken before a release occurs. This would be the case if authorities have prior warning about a potential RDD/IND incident.

[b] In certain circumstances, food and water interdiction may occur in early phases. In addition, some exposure routes (e.g., ingestion of contaminated food) may occur earlier than depicted in the figure, depending on the unique characteristics of the incident.

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(d) Guidance for RDD and IND Incidents

This section defines protective actions and protective action guides, and provides guidance for their implementation in RDD and IND incidents. In addition, this section provides guidance for protection of emergency workers, and a strategy for devising cleanup plans, criteria, and options.

(1) Protective Actions

Protective actions are activities that should be conducted in response to an RDD or IND incident in order to reduce or eliminate exposure of the public to radiation or other hazards. These actions are generic and are applicable to RDDs and INDs. The principal protective action decisions for consideration in the early and intermediate phases of an emergency are whether to shelter-in-place, evacuate, or relocate affected or potentially affected populations. Secondary actions include administration of medical countermeasures, decontamination (including decontamination of persons evacuated from the affected area), use of access restrictions, and use of restrictions on food and water. In some situations, only one protective action needs to be implemented, while in others, numerous protective actions should be implemented. Many factors should be considered when deciding whether or not to order a protective action based on the projected dose to a population. For example, evacuation of a population is much more difficult and costly as the size of the population increases.

(2) Protective Action Guides (PAGs)

A PAG is the projected dose to a reference individual, from an accidental or deliberate release of radioactive material, at which a specific protective action to reduce or avoid that dose is recommended. Thus, protective actions are designed to be taken before the anticipated dose is realized.

The Environmental Protection Agency (EPA) has published PAGs in the ''Manual of Protective Action Guides and Protective Actions for Nuclear Incidents'' (EPA 400–R–92–001, May 1992), in coordination with the Federal Radiological Preparedness Coordinating Committee (FRPCC). The PAGs presented in this manual, hereafter referred to as the 1992 EPA PAGs, are non-regulatory. They are designed to provide a flexible basis for decisions under varying emergency circumstances. The 1992 EPA PAGs meet the following principal criteria and goals: (1) Prevent acute effects, (2) reduce risk of chronic effects, and (3) require optimization to balance protection with other important factors and ensure that actions taken result in more benefit than harm.

The 1992 EPA PAG Manual, however, was not developed to address response actions following radiological or nuclear terrorist incidents and does not address long-term cleanup. The 1992 EPA PAG Manual was written to address the kinds of nuclear or radiological incidents deemed likely to occur. While intended to be applicable to any radiological release, the 1992 EPA PAGs were designed principally to address the impacts of commercial NPP accidents, the worst type of incident under consideration at that time. This is important for two reasons: Commercial nuclear power plant accidents are almost always signaled by preceding events, giving plant managers time to make decisions, and giving local emergency managers time to communicate with the public and initiate evacuations if necessary. In addition, the suite of radionuclides present at nuclear power plants is well-known, and is dominated by relatively short-lived isotopes.

The 1992 EPA PAG Manual provides a significant part of the basis of this document and should be referred to for additional details. In deriving the recommendations contained in this Guidance, new types of incidents and scenarios that could lead to environmental radiological contamination were considered. The interagency working group determined that the 1992 EPA PAGs for the early and intermediate phases, including emergency responder guidelines, are also appropriate for use in RDD and IND incidents. This Guidance is intended to supplement the 1992 EPA PAG Manual for application to RDD and IND incidents, including providing new late phase guidance.

The RDD/IND Guidance provides generic criteria based on balancing public health and welfare with the risk of various protective actions applied in each of the phases of an RDD or IND incident. The RDD/IND Guidance is specific to radiation and radioactive materials, and must be considered in the context of other chemical or biological hazards that may also be present. Though the early and intermediate PAGs in this Guidance are values of dose to be avoided, published dose conversion factors and derived response levels may be utilized in estimating doses, and for choosing and implementing protective actions. Other quantitative measures and derived concentration values may be useful in emergency situations; for example, for the release of goods and property from contaminated zones, and to control access into and out of contaminated areas.

Because of the short time frames required for emergency response decisions in the early and intermediate phases, it is likely there will not be opportunities for local decision makers to consult with a variety of stakeholders before taking actions. Therefore, this Guidance incorporates the significant body of work done in the general context of radiological emergency response planning from the development of the 1992 EPA PAGs, and represents the results of scientific analysis, public comment, drills, exercises, and a consensus at the Federal level for appropriate emergency action.

In order to use the early and intermediate phase PAGs to make decisions about appropriate protective actions, decision makers will need information on suspected radionuclides; projected plume movement, and radioactive depositions; and/or actual measurement data or, during the period initially following the release, expert advice in the absence of good information. Sources of such information include on-scene responders, as well as monitoring, assessment, and modeling centers.

(3) Early and Intermediate Phase Protective Action Guides for RDD and IND Incidents

The early and intermediate phase RDD/IND PAGs are generally based on the following sources: The 1992 EPA PAGs developed by EPA in coordination with other Federal agencies through the Federal Radiological Preparedness Coordinating Committee; guidance developed by the FDA for food and food products and the distribution of potassium iodide. Table 1 provides a summary of the early and intermediate phase PAGs for protection of the general public in an RDD or IND incident and key protective actions.

TABLE 1—PROTECTIVE ACTION GUIDES FOR RDD AND IND INCIDENTS

Phase	Protective action recommendation	Protective action guide
Early	Sheltering-in-place or evacuation of the public[a].	1 to 5 *rem* (0.01–0.05 *Sv*) projected dose.[b]
	Administration of prophylactic drugs—potassium iodide[c,e] Administration of other prophylactic or decorporation agents[d].	5 *rem* (0.05 *Sv*) projected dose to child thyroid.[c,e]
Intermediate	Relocation of the public	2 *rem* (0.02 *Sv*) projected dose first year. Subsequent years, 0.5 *rem*/y (0.005 *Sv*/y) projected dose.[b]
	Food interdiction	0.5 *rem* (0.005 *Sv*) projected dose, or 5 *rem* (0.05 *Sv*) to any individual organ or tissue in the first year, whichever is limiting.
	Drinking water interdiction	0.5 *rem* (0.005 *Sv*) projected dose in the first year.

[a] Should normally begin at 1 *rem* (0.01 *Sv*); take whichever action (or combination of actions) that results in the lowest exposure for the majority of the population. Sheltering may begin at lower levels if advantageous.
[b] Total Effective Dose Equivalent (TEDE)—the sum of the effective dose equivalent from external radiation exposure and the committed effective dose equivalent from inhaled radioactive material.
[c] Provides thyroid protection from radioactive iodine only.
[d] For other information on other radiological prophylactics and medical countermeasures, refer to *http://www.fda.gov/cder/drugprepare/default.htm, http:/www.bt.cdc.gov/radiation*, or *http://www.orau.gov/reacts*.
[e] Committed Dose Equivalent (CDE). FDA understands that a KI administration program that sets different projected thyroid radioactive dose thresholds for treatment of different population groups may be logistically impractical to implement during a radiological emergency. If emergency planners reach this conclusion, FDA recommends that KI be administered to both children and adults at the lowest intervention threshold (*i.e.*, >5 *rem* (0.05 *Sv*) projected internal thyroid dose in children) (FDA 2001).

In the early and intermediate phases of an RDD or IND incident there may not be adequate information to determine radiation levels or make dose projections because there may be little or no advance notice of an attack, the characteristics of the RDD or IND may not be immediately known, monitoring equipment may not be available to make measurements, or there may not be time to do measurements or projections before emergency response actions need to be initiated. Therefore, to use this guide to determine whether protective action is needed in a particular situation, it may be necessary to compare the PAGs to results of a dose projection. In general, it should be emphasized that realistic assumptions, based on incident-specific information, should be used when making radiation dose projections so that the final results are representative of actual conditions rather than overly conservative exposures. It is very important that local officials responsible for carrying out emergency response actions conduct advance planning to ensure that they are adequately prepared if such an incident were to occur.

(A) Early Phase PAGs

For the early phase, the 1992 EPA PAGs for evacuation and sheltering-in-place are appropriate for RDD and IND incidents (see Table 1). Early phase protective action decisions in an RDD or IND must be made quickly, and with very little confirmatory data. While sheltering-in-place should be carried out at 1 *rem* (0.01 *Sv*) sheltering-in-place can begin at any projected dose level.

FDA guidance on the administration of stable iodine is also considered appropriate (useful primarily for NPP incident involving radioiodine release). The administration of other medical countermeasures should be evaluated on a case-by-case basis and depend on the nature of the event and radionuclides involved.

The initial zone should be established and controlled around the incident site, as is the case for other crime scenes and hazards. This Guidance allows for the refinement of that area if the radiation exposure levels warrant such action. Advance planning by local officials for messaging, communications, and actions in the event of an RDD or IND are strongly encouraged.

(B) Intermediate Phase PAGs

The decisions in the intermediate phase will focus on the return of key infrastructure and services, and the rapid return to normal activities. This will include decisions on allowing use of roads, ports, waterways, transportation systems (including subways, trains, and airports), hospitals, businesses, and residences. It will also include responses to questions about acceptable use and release of real and personal property such as cars, clothes, or equipment that may have been impacted by the RDD or IND incident. Many of the activities will be concerned with materials and areas that were not affected, but for which members of the public may have concern. Thus, the RDD/IND Guidance serves to guide decisions on returning to impacted areas, leaving impacted areas, and providing assurance that an area was not impacted. The intermediate phase is also the period during which planning for long-term site cleanup and remediation should be initiated.

For the intermediate phase, relocation of the population is a protective action that can be used to reduce dose. Relocation is the removal or continued exclusion of people (households) from contaminated areas in order to avoid chronic radiation exposure, and it is meant to protect the general public. For the intermediate phase, the existing relocation PAGs of 2 *rem* (0.02 *Sv*) in the first year and 0.5 *rem* (0.005 *Sv*) in any subsequent year are considered appropriate for RDD and IND incidents. However, for IND incidents, the area impacted and the number of people that might be subject to relocation could potentially be very large and could exceed the resources and infrastructure available. For example, in making relocation decisions, the availability of adequate accommodations for relocated people should be considered. Decision makers may need to consider limiting action to those areas most severely affected, phasing relocation implementation based on the resources available.

The relocation PAGs apply principally to personal residences, but may impact other locations as well. For example, these PAGs could impact work locations, hospitals, and park lands, as well as the use of highways and other transportation facilities. For each type of facility, the individual occupancy time should be taken into account to determine the criteria for using a facility or area. It might be necessary to avoid continuous use of homes in an area

because radiation levels are too high; however, a factory or office building in the same area could be used because occupancy times are shorter. Similarly, a highway could be used at higher contamination levels because the exposure time of highway users would be considerably less than the time spent by residents in a home.

The intermediate phase PAG for the interdiction of food is set at 0.5 *rem* (0.005 *Sv*) projected dose in the first year, and the intermediate phase PAG for the interdiction of drinking water is set at 0.5 *rem* (0.005 *Sv*) projected dose for the first year for RDD and IND incidents. These values are consistent with those now used or being considered as PAGs for other types of nuclear/radiological incidents.

The use of simple dose reduction techniques is recommended for personal property and all potentially contaminated areas that continue to be occupied. This technique is also consistent with the 1992 EPA PAGs developed for other types of nuclear/radiological incidents. Examples of simple dose reduction techniques would be washing all transportation vehicles (*e.g.*, automobiles, trains, ships, and aircraft), personal clothing, eating utensils, food preparation surfaces, and other personal property before next use, as practicable and appropriate.

(4) Late Phase Guidance

The late phase involves the final cleanup of areas and property at which radioactive material is present. Unlike the early and intermediate phases of an RDD or IND incident, decision makers will have more time and information during the late phase to allow for better data collection, stakeholder involvement, and options analysis. In this respect, the late phase is no longer a response to an ''emergency situation,'' and is better viewed in terms of the objectives of cleanup and site recovery.

Because of the extremely broad range of potential impacts that may occur from RDDs and INDs (*e.g.*, light contamination of one building to widespread destruction of a major metropolitan area), a pre-established numeric cleanup guideline is not recommended as best serving the needs of decision makers in the late phase. Rather, a process should be used to determine the societal objectives for expected land uses and the options and approaches available, in order to select the most acceptable criteria. For example, if the incident is an RDD of limited size and the impacted area is small, it might reasonably be expected that a complete return to normal conditions can be achieved within a short period of time. However, if the impacted area is large, achieving low cleanup levels for remediation of the entire area, and/or maintaining existing land uses, may not be practicable.

It should be noted that an intermediate phase PAG is not equivalent to a starting point for development of the late phase cleanup process. However, contamination and radiation levels existing after an incident (*e.g.*, concentrations, or dose rates), as well as actions already taken, provide practical starting points for further action and cleanup. The goal of cleanup is to reduce those levels as low as is reasonable. It is possible that final criteria for reoccupation at a given incident site may be either below or above the intermediate phase PAG dose value, since no dose or risk cap for the late phase is explicitly recommended under this Guidance.

Late phase cleanup criteria should be derived through a site-specific optimization process, which should include potential future land uses, technical feasibility, costs, cost-effectiveness, and public acceptability. Optimization is a concept that is common to many State, Federal, and international risk management programs that address radionuclides and chemicals, although it is not always referred to as such. The Risk Management Framework described in Appendix 2 provides such a process and helps assure the protection of public health and welfare. Decisions should take health, safety, technical, economic, and public policy factors into account. Appendix 3 utilizes the framework as a basis for RDD and IND site cleanup planning.

Broadly speaking, optimization is a flexible, multi-attribute decision process that seeks to weigh many factors. Optimization analyses are quantitative and qualitative assessments applied at each stage of site recovery decision-making, from evaluation of remedial options to implementation of the chosen alternative. The evaluation of cleanup alternatives, for example, should factor in all relevant variables, including areas impacted (*e.g.*, size and location relative to population), types of contamination (chemical, biological, and/or radioactive), human health, public welfare, technical feasibility, costs, and available resources to implement and maintain remedial options, short-term effectiveness, long-term effectiveness, timeliness, public acceptability, and economic effects (*e.g.*, on residents, tourism, and business, and industry).

Various Federal, and State agencies, along with other organizations (*e.g.*, national and international advisory organizations), already have guidance and tools that may be used to help establish cleanup levels. The optimization process allows local decision makers to draw on the thought processes used to develop the dose and/or risk benchmarks used by these State, Federal, or other sources. These benchmarks, though developed within different contexts, may be useful for analysis of cleanup options. Decision makers might reasonably determine that it is appropriate to move up or down from these benchmarks, depending on the site-specific circumstances and balancing of other relevant factors.

In developing this Guidance, the Federal Government recognized that experience from existing programs, such as the EPA's Superfund program, the NRC's standards for decommissioning and decontamination to terminate a plant license, and other national and international recommendations, may be useful in planning the cleanup and recovery efforts following an RDD or IND incident. This Guidance allows the consideration and incorporation, as appropriate, of any or all of the existing environmental program elements.

The site-specific optimization process includes quantitative and qualitative assessments applied at each stage of site cleanup decision making, from initial scoping and stakeholder outreach, to evaluation of cleanup options, to implementation of the chosen alternative. The evaluation of options for the late phase of recovery after an RDD or IND incident should consider all of the relevant factors, including:

- Areas impacted (*e.g.*, size, location relative to population).
- Types of contamination (chemical, biological, and radiological).
- Other hazards present.
- Human health risk.
- Public welfare.
- Ecological risks.
- Actions already taken during the early and intermediate phases.
- Projected land uses.
- Preservation or destruction of places of historical, national, or regional significance.
- Technical feasibility.
- Wastes generated and disposal options and costs.
- Costs and available resources to implement and maintain remedial options.
- Potential adverse impacts (*e.g.*, to human health, the environment, and the economy) of remedial options.
- Short-term effectiveness.
- Long-term effectiveness.
- Timeliness.
- Public acceptability, including local cultural sensitivities.

• Economic effects (*e.g.*, on employment, tourism, and business).
• Intergenerational equity.

The site-specific optimization process provides the best opportunity for decision makers to gain public confidence through the involvement of stakeholders. This process should begin during, and proceed independently of, intermediate phase protective action activities.

Appendix 3 provides additional details on a process that may be used to implement this Guidance, describing the role of the Federal Government and how it could integrate its activities with State and local governments and the public. For some radiological terror incidents, States may take the primary leadership role in cleanup and contribute significant resources toward recovery of the site.

As explained in Appendix 3, the Incident Command or Unified Command should develop a schedule with milestones for conducting the optimization process as soon as practicable following the incident. While the goal should be to complete the initial optimization process as soon as possible following an incident (depending on the size of the incident), the schedule must take into consideration incident-specific factors that would affect successful implementation. This schedule may need to reflect a phased approach to cleanup and is subject to change as the cleanup progresses.

(5) Emergency Worker Guidelines

The response during the early phase includes initial emergency response actions to protect public health and welfare in the short term. Priority should be given to lifesaving and first-aid actions. Following an IND detonation in particular, the highest priority missions should also include actions such as suppression of fires that could result in further loss of life.

For the purposes of this Guidance, ''emergency worker'' is defined as any worker who performs an early or intermediate phase work action. Table 2 shows the emergency worker guidelines for early phase emergency response actions. In intermediate and late phase actions (*i.e.*, cleanup and recovery), standard worker protections, including the 5 *rem* (0.05 *Sv*) occupational dose limit, apply.

TABLE 2—EMERGENCY WORKER GUIDELINES IN THE EARLY PHASE [2]

Total effective dose equivalent (TEDE) [a] guideline	Activity	Condition
5*rem* (0.05 *Sv*)	All occupational exposures	All reasonably achievable actions have been taken to minimize dose.
10 *rem* (0.1 *Sv*)	Protecting valuable property necessary for public welfare (*e.g.*, a power plant).	• All appropriate actions and controls have been implemented; however, exceeding 5 *rem* (0.05 *Sv*) is unavoidable. • Responders have been fully informed of the risks of exposures they may experience. • Dose >5 *rem* (0.05 *Sv*) is on a voluntary basis. • Appropriate respiratory protection and other personal protection is provided and used. • Monitoring available to project or measure dose.
25 *rem* (0.25 *Sv*) [b]	Lifesaving or protection of large populations. It is highly unlikely that doses would reach this level in an RDD incident; however, worker doses higher than 25 *rem* (0.25 *Sv*) are conceivable in a catastrophic incident such as an IND incident.	• All appropriate actions and controls have been implemented; however, exceeding 5 *rem* (0.05 *Sv*) is unavoidable. • Responders have been fully informed of the risks of exposures they may experience. • Dose >5 *rem* (0.05 *Sv*) is on a voluntarily basis. • Appropriate respiratory protection and other personal protection is provided and used. • Monitoring available to project or measure dose.

[a] The projected sum of the effective dose equivalent from external radiation exposure and committed effective dose equivalent from internal radiation exposure.

[b] EPA's 1992 PAG Manual states that ''Situations may also rarely occur in which a dose in excess of 25 *rem* for emergency exposure would be unavoidable in order to carry out a lifesaving operation or avoid extensive exposure of large populations.'' Similarly, the NCRP and ICRP raise the possibility that emergency responders might receive an equivalent dose that approaches or exceeds 50 *rem* (0.5 *Sv*) to a large portion of the body in a short time (Limitation of Exposure to Ionizing Radiation, National Council on Radiation Protection and Measures, NCRP Report 116 (1993a). If lifesaving emergency responder doses approach or exceed 50 *rem* (0.5 *Sv*) emergency responders must be made fully aware of both the acute and the chronic (cancer) risks of such exposure.

This Guidance document and the emergency worker guidelines were developed for a wide range of possible radiological scenarios, from a small RDD that may impact a single building to an IND that could potentially impact a large geographic region. Therefore, the 5, 10 and 25 *rem* guidelines (Table 2) should not be viewed as inflexible limits applicable to the range of early phase emergency actions covered by this Guidance. Because of the range of impacts and case-specific information needed, it is impossible to develop a single turn-back dose level for all responders to use in all events, especially those that involve lifesaving operations. Indeed, with proper preparedness measures (training, personal protective equipment, etc.) many radiological emergencies addressed by this document, even lifesaving operations, may be manageable within the 5 *rem* (0.05 *Sv*) occupational limit. Moreover, Incident Commanders should make every effort to employ the ''as low as reasonably achievable'' (ALARA) principle after an incident. Still, in some incidents medically significant doses above the annual occupational 5 *rem* (0.05 *Sv*) dose limit may be unavoidable. For instance, in the case of a catastrophic incident, such as an IND, Incident Commanders may need to consider raising the lifesaving and valuable property (*i.e.*, necessary for public welfare) emergency worker guidelines in order to prevent further loss of life and prevent the spread of massive destruction. Ensuring that emergency workers have full knowledge of the

[2] In the intermediate and late phases, standard worker protections, including the 5 *rem* occupational dose limit, would normally apply.

associated risks prior to initiating emergency action and medical evaluation of emergency workers after such exposure is essential. (See Appendix 1 for additional discussion of ALARA.)

Ideally, the Incident Commanders should define and enforce the emergency dose limits in accordance with the immediate risk situation and the type of emergency action being performed (see Table 2). However, in the case of an attack it may not be possible to conduct dose measurements or projections before initiating emergency response activities. Therefore, it is crucial that officials responsible for carrying out emergency response actions in the early phase conduct thorough advance planning to ensure that they are adequately prepared if such an incident occurs. Planning should include evaluating data and information on possible or anticipated radiation exposures in RDD or IND incidents, developing procedures for reducing and controlling emergency responder exposures to allowable dose limits (Table 2), obtaining appropriate personal protective equipment (*e.g.*, respirators, clothing) for protecting emergency responders who enter contaminated areas, and developing appropriate decision-making criteria for responding to catastrophic incidents that may involve high radiation exposure levels. Planning should also include informing and educating emergency workers about emergency response procedures and controls as well as the acute and chronic (cancer) risks of exposure, particularly at higher dose levels. Effective advance planning will help to ensure that the emergency worker guidelines are correctly applied and that emergency workers are not exposed to radiation levels that are higher than necessary in the specific emergency action.

In addition, as part of advance planning, officials should develop a process for assessing hazards and for determining appropriate actions in incidents that may involve high radiation doses. Decisions regarding emergency response actions in incidents involving high radiation exposures require careful consideration of the benefits to be achieved by the ''rescue'' or response action (*e.g.*, the significance of the outcome to individuals, large populations, general welfare, or valuable property necessary for public welfare), and the potential health impacts (*i.e.*, acute and chronic) to emergency workers. The planning for a potential high radiation exposure incident should consider how to weigh the potential for and significance of the success of the emergency response/rescue operation against the potential for and significance of the health and safety risks to the emergency workers. Federal, state and local emergency response officials should use these guidelines to develop specific operational plans and response protocols for protection of emergency response workers.

(e) Operational Guidelines for Early and Intermediate PAGs

Implementation of the early and intermediate PAGs may be supported by operational guidelines that can be readily used by decision makers and responders in the field. Operational guidelines are levels of radiation or concentrations of radionuclides that can be accurately measured by radiation detection and monitoring equipment, and then related or compared to the PAGs to quickly determine whether actions need to be implemented. Federal agencies are continuing development of operational guidelines to support the application of this Guidance, and other site-level decisions; therefore, they are provided here in overview only.

Some values already exist that could potentially serve as operational guidelines for RDD and IND response and recovery operations, and there are various tools available to help derive operational guidelines for response planning. Appendix 4 presents a summary of the types of operational guidelines for RDD and IND response operations currently under development.

Additional tools and assessment methodologies to aid in planning and development of operational guidelines for use with PAGs for a wide range of situations are available from the Federal Radiological Monitoring and Assessment Center (FRMAC). These tools and methods are written to support FRMAC operations during radiological and nuclear emergency responses. The FRMAC manuals provide detailed methods for computing Derived Response Levels (DRLs) and doses based on measurement or modeling results and suggest input parameters for various situations.[3]

Some examples of existing values that can be used as operational guidelines for RDD and IND response operations and tools that could be used to establish site-specific operational guidelines include, derived response levels, derived intervention levels for food, and radiation levels for control of access to radiation areas.

(1) Derived Response Levels (DRLs)

The 1992 EPA PAG Manual contains guidance and Derived Response Levels (DRLs) for various potential exposure pathways, including external exposure, inhalation, submersion, ground shine, and drinking water, for application in the early and intermediate phases. These values serve as, or can be adapted to serve as, operational guidelines to readily determine if protective actions need to be implemented. The summed ratios of radionuclide concentrations obtained through field measurements can be compared to the DRLs to determine whether the PAGs are likely to be exceeded. If concentrations of radionuclides obtained through field measurements are less than the DRLs, the PAGs are not likely to be exceeded and, thus, a protective action may not need to be taken.

(2) Derived Intervention Levels (DILs) for Food

The FDA has developed Derived Intervention Levels (DILs) for implementation of the early and intermediate PAGs for food. These DILs establish levels of contamination that can exist on crops and in food products and still maintain dose levels below the food PAGs, and could therefore be used as operational guidelines for RDD and IND incidents. More information on DILs can be found in ''Accidental Radioactive Contamination of Human Food and Animal Feeds: Recommendations for State and Local Agencies'' (U.S. Department of Health And Human Services, Food and Drug Administration, August 13, 1998).

(3) Radiation Levels for Control of Access to Radiation Areas

Additional operational guidelines for use in the early and intermediate phases of response are being developed for issues such as clearance of personal and real property, land and facility access, and for response actions. A DOE project supported by an interagency effort is developing needed tools and operational guidelines that address continued use, or necessary control for personal property (*e.g.*, vehicles, equipment, personal items, debris) and real property (*e.g.*, buildings, roads, bridges, residential and commercial areas, national monuments and icons) that may be impacted by an RDD or IND incident. The effort includes consideration of short and long term use

[3] These materials and additional information on the FRMAC can be obtained at *http://www.nv.doe.gov/nationalsecurity/homelandsecurity/frmac.*

or access to areas. A DOE report [4] is available for review, and use as appropriate. The report includes proposed operational guidelines and their technical derivation, and provides tools such as the computer model RESRAD–RDD [5] for calculating incident-specific guidelines and worker stay-time tables for access control, and dose-based soil and building contamination levels to assist in the site-specific optimization process. The goal of the DOE report is to provide sufficient information to assist decision makers and responders in executing their responsibilities in a safe way. Appendix 4 of this Guidance provides a more detailed overview of the operational guidelines contained in the DOE draft report and their intended applications.

Appendix 1—Planning for Protection of Emergency Workers Responding to RDD and IND Incidents

The purpose of this appendix is to provide Federal, state, and local decision makers with information on how to prepare for, and implement emergency worker guidance in RDD and IND incidents. Because there may not be adequate information or time for determining radiation levels or making dose projections in the early phase of an RDD or IND incident, it is very important that emergency management officials conduct worker health and safety planning and training in advance to ensure they are adequately prepared if such an incident occurs.

Planning should include evaluating data and information on possible or anticipated radiation exposures in RDD and IND incidents and on acute and chronic risks of radiation exposures, developing procedures for reducing and controlling emergency worker exposures, obtaining appropriate personal protective equipment (*e.g.*, respirators, protective clothing) to help protect emergency workers who enter exposure areas, and developing appropriate decisionmaking criteria for responding in catastrophic incidents, such as an IND, that may involve high exposure levels. Planning should also include training and educating emergency workers about emergency response procedures in radiological environments, radiation exposure controls and the risks of exposure, particularly at higher levels. Effective planning and training will help to ensure that exposures to emergency workers are kept to the lowest radiation levels necessary for the particular emergency response action.

This appendix provides information to assist local, State, and Federal authorities, and emergency workers in planning for radiological emergencies, in particular those related to terrorist attacks using RDDs and INDs. The appendix is not intended to provide comprehensive training guidance. Other information useful in the planning process may be available from the following organizations:

- The National Council on Radiation Protection and Measurements,
- the International Commission on Radiological Protection,
- the International Atomic Energy Agency,
- the American Nuclear Society,
- the Health Physics Society, and
- the Conference of Radiation Control Program Directors.

(a) Guidelines for Emergency Workers in Responding to RDD and IND Incidents

Table 2 in Section (d)(5) of the Guidance shows the emergency worker guidelines for the early phase. In the intermediate and late phases, standard OSHA and other worker health and safety standards apply. The DOE and NRC also have standards that govern worker health and safety for normal operations at their owned or licensed facilities. OSHA's occupational radiation dose limit (1.25 *rem* (0.0125 *Sv*) per annual quarter, or 5 *rem* (0.05 *Sv*) total in one year) minimizes risk to workers consistent with the Occupational Health and Safety Act (29 U.S.C. 651 et seq.).

In many radiological incidents, particularly RDD situations, the actual dose to emergency workers may be controlled to less than 5 *rem* (0.05 *Sv*). However, in other radiological incidents precautions may not be sufficient or effective to keep emergency worker doses at or below 5 *rem* (0.05 *Sv*), because of the magnitude of the incident and because certain measures typically used to control exposures in normal operations may not be applicable. For example, one of the major radiation protection controls used in normal radiological operations is containment of the radioactive material. Another is to keep people away from the source material. During emergency response to an RDD or IND incident use of these controls may not be possible due to the nature of the incident and the urgency of response actions. As a result, high radiation exposures for emergency responders may be unavoidable and have the potential to exceed regulatory limits used for normal operations. Therefore, the 5, 10 and 25 *rem* guidelines found in Table 2 should not be viewed as absolute standards applicable to the full range of incidents covered by this guidance, but rather serve as decision points for making worker protection decisions during emergencies.

Emergency response actions in catastrophic incidents that involve high exposure levels require careful consideration of both the benefits to be achieved by the ''rescue'' or response action (*e.g.*, the significance of the benefit to individuals, populations, valuable property necessary for general welfare), and the potential for acute and chronic health impacts to individuals conducting the emergency response operation. That is, in making an emergency response decision, the potential for the success of the response/rescue operation and the significance of its benefits to the community should be weighed against the potential for, and significance of, the health and safety risks to workers.

(b) Controlling Occupational Exposures and Doses to Emergency Workers

Appropriate measures should be taken to minimize radiation dose to emergency workers responding to an RDD or IND incident. With proper preparedness measures (*e.g.*, training, personal protective equipment), many emergencies that this document addresses, including lifesaving actions, may be possible to manage within the 5 *rem* (0.05 *Sv*) occupational limit. Emergency management officials responsible for an incident should take steps to keep all doses to emergency workers ''as low as reasonable achievable'' (ALARA). Protocols for maintaining ALARA should include the following health physics and industrial hygiene practices:

- Minimizing the time spent in the contaminated area (*e.g.*, rotation of emergency responders);
- Maintaining distance from sources of radiation;
- Shielding of the radiation source;
- Using hazard controls that are applicable to the work performed;
- Properly selecting and using respirators and other personal protective equipment (PPE), to minimize exposure to internally deposited radioactive materials (*e.g.*, alpha and beta emitters); and
- Using prophylactic medications, when appropriate, that either block the uptake or reduce the retention time of radioactive material in the body.

To minimize the risks from exposure to ionizing radiation, all emergency responders should be trained and instructed to follow emergency response plans and protocols and be advised on how to keep exposures as low as reasonably achievable. Health physics and industrial hygiene practices should include the use of dosimetry for monitoring of individual exposure with real-time readings (*i.e.*, real-time electronic dosimeters) and permanent records (*e.g.*, film badges, optically stimulated luminescent [OSL], or thermoluminescent dosimeters [TLDs]). Also, employers should (1) develop procedures and training that relate measurements to dose and risk, (2) understand and practice ALARA procedures with workers, and (3) address other issues related to performing response in a radiological environment.

(c) Understanding Radiation Risks

If there is the possibility that emergency workers would receive a radiation dose higher than the 5 *rem* (0.05 *Sv*) guideline, emergency workers should be trained to understand the risk associated with such doses, including a thorough explanation of the latent risks associated with receiving doses greater than 5 *rem* (0.05 *Sv*), and acute risks at higher doses. Emergency workers should be fully aware of both the projected acute and chronic risks (cancer) they may

[4] Preliminary Report on Operational Guidelines Developed for Use in Emergency Preparedness and Response to a Radiological Dispersal Device Incident, DOE/HS–0001. The report and associated material will be available at *http://www.ogcms.energy.gov*.

[5] RESRAD–RDD is derived from RESRAD, which is a computer model designed to estimate radiation doses and risks from residual radioactive materials. The RESRAD model has been applied to determine the risk to human health posed at over 300 sites in the United States and abroad that have been contaminated with radiation.

incur in an emergency response action. Furthermore, emergency workers cannot be forced to perform a rescue action involving radiation doses above regulatory limits, and they should be given reasonable assurance that normal controls cannot be utilized to reduce doses to less than 5 *rem* (0.05 *Sv*). After the event, it is essential that emergency workers be provided with medical follow up.

The estimated risk of fatal cancer[6] for healthy workers who receive a dose of 10 *rem* (0.10 *Sv*) is about 0.46 percent over the worker's lifetime (*i.e.*, 4–5 fatal cancers per 1000 people, or 0.4–0.5 percent). The risk scales linearly. For workers who receive a dose of 25 *rem* (0.25 *Sv*), the risk is about 1.1 percent. The risk is believed to be greater for those who are younger at the time of exposure. For example, for 20–30 year olds the estimated risk of fatal cancer at 25 *rem* (1.75 percent) is about twice as large as the risk for 40–50 year olds (0.8 percent).

Above 50 *rem* (0.5 *Sv*) acute effects are possible. Where lifesaving actions may result in doses that approach or exceed 50 *rem* (0.50 *Sv*), such as in an IND incident, emergency workers need to have a full understanding of the potential acute effects of the expected radiation exposure, in addition to the risk of chronic effects. The decision to take these lifesaving actions must be based on the estimation that the human health benefits of the action exceed the safety and health risks to the emergency workers.

It is important to note that the approach used to translate dose to risk in this discussion is a simplistic approach for developing rough estimates of risks for comparative purposes. Other more realistic and accurate approaches are often used in assessing risks for risk management decisions (other than for emergencies) when more complete information about the contaminants and the potential for human exposure is available. These approaches rely on radionuclide-specific risk factors (*e.g.*, found in Federal Guidance Report No. 13 and EPA Health Effects Assessment Summary Tables), and are typically used in long-term assessments, such as environmental cleanup.

(d) Preparedness

To prepare for large radiological disasters, local officials and Incident Commanders will need to have a decision-making process already developed and ready to implement when they can no longer use standard occupational dose limits or when there is the possibility that they may face decisions involving exposures approaching or exceeding 25 *rem* (0.25 *Sv*) for lifesaving operations. Preparedness entails investigating the nature of the RDD and IND incident for which local officials must be prepared, having appropriate worker health and safety plans and protocols for such incidents, and training and exercises to assure a level of readiness among officials and responders.

Incident Commanders and emergency responders should thoroughly understand the emergency worker guidelines for radiological emergency response, including specific emergency responder health and safety procedures and ALARA principles. The reader is referred to the EPA PAG Manual (May 1992), the FRMAC Radiological Emergency Response Health and Safety Manual (May 2001), and the Hazardous Waste Operations and Emergency Response (HAZWOPER) regulations. The EPA has a Worker Protection (40 CFR part 311) standard that applies the HAZWOPER standard to State and local workers in States that do not have their own occupational safety and health program.

The HAZWOPER regulations, found in 29 CFR 1910.120 and 1926.65, were promulgated to protect personnel working at a hazardous waste site, or a treatment, storage, or disposal facility, or performing emergency response. This standard also covers employers whose employees are engaged in emergency response without regard to the location of the hazard (unless specifically exempted or where a more protective safety and health standard applies). If an employer anticipates that their employees will respond to a potential hazard, HAZWOPER requires such actions as (1) the development of an emergency response plan (including personnel roles, lines of authority, training, communication, personal protective equipment, and emergency equipment), (2) procedures for handling a response, (3) specific training requirements based on the anticipated roles of the responder, and (4) medical surveillance. For specific interpretations regarding HAZWOPER and/or other occupational safety and health standards, employers should consult the appropriate implementing agency (*e.g.*, appropriate Federal agencies, State Occupational Safety and Health Programs, or State Radiation Control Programs).

Appendix 2—Risk Management Framework for RDD and IND Incident Planning

This appendix contains a description of a risk management framework for making decisions to protect public health and welfare in the context of cleanup and site recovery following an RDD or IND incident. The framework is based on the report, ''Framework for Environmental Health Risk Management,'' mandated by the 1990 Clean Air Act Amendments published by the Commission on Risk Assessment and Risk Management in 1997. This appendix provides specific material for RDD and IND incidents, and reference to the report is encouraged for the details of the general framework. A plan for implementing this framework for RDD and IND incidents is provided in Appendix 4.

The ''Framework for Environmental Health Risk Management'' is considered generally suitable for addressing the long-term cleanup issues for RDDs and INDs. Given the time frames following an RDD or IND incident there is generally not sufficient time in the early phase to conduct a full risk assessment and get stakeholder involvement. In order for the framework to be most useful it must be used in planning and preparing for a radiological or nuclear incident. Many of the basic risk management principles were also used in development of the 1992 EPA PAGs.

The framework is designed to help decision makers make good risk management decisions. The level of effort and resources invested in using the framework should be commensurate with the significance of the problem, the potential severity and economic impact, the level of controversy surrounding the problem, and resource constraints. The health and environmental hazards that must be considered are radiation hazards, and potentially chemical or biological hazards. Other factors to be considered include the continued disruption in normal activities, loss of, or limited access to critical infrastructure and health care and general economic damage.

The framework relies on the three key principles of (1) broad context, (2) stakeholder participation, and (3) iteration. Broad context refers to placing all of the health and environmental issues in the full range of impacts and recovery factors following an RDD or IND incident, and is intended to assure that all aspects of public welfare are taken into account. Stakeholder participation is critical to making and successfully implementing sound, cost-effective, risk-informed decisions. Iteration is the process of continuing to refine the analysis base on information available, and improve the decisions and actions that can be taken at any point in time. Together these principles outline a fair, responsive approach to making the decisions necessary to effectively respond to the impacts of an RDD or IND incident.

Risk management is the process of identifying, evaluating, selecting, and implementing actions to reduce risk to public health and the environment. The goal of risk management is scientifically sound, cost-effective, integrated actions that reduce or prevent public health impacts while taking into account social, cultural, ethical, public policy, and legal considerations. In order to accomplish this goal, information will be needed on the nature and magnitude of the hazard present as a result of the incident, the options for reducing risks, and the effectiveness and costs of those options. Decision makers also compare the economic, social, cultural, ethical, legal, and public policy implications associated with each option, as well as the unique safety and health hazards facing emergency responders and ecological hazards the cleanup actions themselves may cause. Often a stakeholder working group can provide input needed to consider all of the relevant information.

Stakeholders can provide valuable input to decision makers during the long-term cleanup effort, and the key decision makers should establish a process that provides for appropriate stakeholder input. Identifying which stakeholders need to be involved in the process depends on the situation. In the case of a site contaminated as a result of an RDD or IND incident, stakeholders may include individuals whose health, economic well-being, and quality of life are currently affected or would be affected by the cleanup and the site's subsequent use, or nonprofit organizations representing such individuals. They may also include those who have

[6] Risk per dose of a fatal cancer for members of the general public is assumed to be about 6×10^{-4} per *rem*. Cancer incidence is assumed to be about 8×10^{-4} per *rem* (see Federal Guidance Report No. 13). Occupational risk coefficients are slightly higher.

regulatory responsibility, and those who may speak on behalf the environment generally, business and economics, or future generations.

Stakeholder input should be considered throughout all stages of the framework as appropriate, including analyzing the risks, identifying potential cleanup options, evaluating options, selecting an approach, and evaluating the effectiveness of the action afterwards. Their input will assist decision makers in providing a reasoned basis for actions to be taken. Further information on the importance and selection of stakeholders can be found in the Framework for Environmental Health Risk Management.

Decision makers can also benefit from the use of working groups that provide expert technical advice regarding the decisions that need to be made during the long-term recovery process. Further information on how to incorporate the use of technical working groups is provided later in this appendix.

(a) The Stages of the Risk Management Framework for Responding to RDD and IND Incidents

The ''Framework for Environmental Health Risk Management'' has six stages:

1. Define the problem and put it in context.
2. Analyze the risks associated with the problem in context.
3. Examine options for addressing the risks.
4. Make decisions about which options to implement.
5. Take actions to implement the decisions.
6. Evaluate results of the actions taken.

Risk management decisions under this framework should do the following:

- Clearly articulate all of the problems in their public health and ecological contexts, not just those associated with radiation.
- Emerge from a decision-making process that elicits the views of those affected by the decision.
- Be based on the best available scientific, economic, and other technical evidence.
- Be implemented with stakeholder support in a manner that is effective, expeditious, and flexible.
- Be shown to have a significant impact on the risks of concern.
- Be revised and changed when significant new information becomes available.
- Account for their multi-source, multimedia, multi-chemical, and multi-risk contexts.
- Be feasible, with benefits reasonably related to their costs.
- Give priority to preventing risks, not just controlling them.
- Be sensitive to political, social, legal, and cultural considerations.

(1) Define the Problems and Put Them in Context

In the case of RDDs, the initial problem is caused by the dispersal of radioactive material. The incident may also result in the release of other types of contaminants (chemical or biological) or create other types of public health hazards. Individuals exposed may include emergency workers and members of the public, and there may be different associated assumptions; for example, how long the individuals will be exposed in the future.

The potential for future radiation exposure of the public from the site must be considered within the context of the societal objectives to be achieved, and must examine cleanup options in the context of other risks members of the community face. There may also be broader public health or environmental issues that local governments and public health agencies have to confront and consider.

The goals of the cleanup effort will extend well beyond the reduction of potential delayed radiation health effects, and may include:

- Public health protection goals, including mitigating acute hazards and long-term chronic issues, and protecting children and other sensitive populations.
- Social and economic goals, such as minimizing disruption to communities and businesses, maintaining property values, and protecting historical or cultural landmarks or resources.
- National security goals, such as maintaining and normalizing use of critical highways, airports, or seaports for mass transit; maintaining energy production; and providing for critical communications.
- Public welfare goals, including maintaining hospital capacity, water treatment works, and sewage systems for protection of community health; assuring adequate food, fuel, power, and other essential resources; and providing for the protection or recovery of personal property.

(2) Analyze the Risks

To make effective risk management decisions, decision makers and other stakeholders need to know what potential harm a situation poses and how great the likelihood is that people or the environment will be harmed. The nature, extent, and focus of a risk analysis should be guided by the risk management goals. The results of a risk analysis—along with information about public values, statutory requirements, court decisions, equity considerations, benefits, and costs—are used to decide whether and how to manage the risks.

Risk analyses can be controversial, reflecting the important role that both science and judgment play in drawing conclusions about the likelihood of effects on public health and the environment. It is important that risk assessors respect both the scientific foundation of risks and the procedures for making inferences about risks in the absence of adequate data. Risk assessors should provide decision makers and other stakeholders with plausible conclusions about risk that can be made on the basis of the available information. They should also provide decision makers with evaluations of the scientific support for their conclusions, descriptions of major sources of uncertainty, and alternative views.

Stakeholders' perception of a risk can vary substantially depending on such factors as the extent to which the stakeholders are directly affected, whether they have voluntarily assumed the risk or had the risk imposed on them, and the nature of their connection with the cause of the risk. For this reason, risk analyses should characterize the scientific aspects of a risk and note its subjective, cultural, and comparative dimensions. Stakeholders play an important role in providing information that should be used in risk analyses and in identifying specific health and ecological concerns.

(3) Examine the Options

This stage of the risk management process involves identifying potential cleanup options and evaluating their effectiveness, feasibility, costs, benefits, cultural or social impacts, and unintended consequences. This process can begin whenever appropriate, after defining the problem and considering the context. It does not have to wait until the risk analysis is completed, although a risk analysis often will provide important information for identifying and evaluating risk management options. In some cases, examining risk management options may help refine a risk analysis. Risk management goals may be redefined after decision makers and stakeholders gain some appreciation for what is feasible, what the costs and benefits are, and how the process of reducing exposures and risks can improve human and ecological health.

Once potential options have been identified, the effectiveness, feasibility, benefits, detriments, and costs of each option must be assessed to provide input into selecting the best option. Key questions include determining (1) the expected benefits and costs, (2) distribution of benefits and costs across the impacted community, (3) the feasibility of the option given the available time, resources, and any legal, political, statutory, and technology limitations, and (4) whether the option increases certain risks while reducing others. Other adverse consequences may be cultural, political, social, or economic. Adverse economic consequences may include impacts on a community, such as reduced property values or loss of jobs, environmental justice issues, and harming the social fabric of a town or tribe by relocating the people away from an area.

Many risk management options may be unfeasible for social, political, cultural, legal, or economic reasons—or because they do not reduce risks to the extent necessary. For example, removing all the soil from an entire valley that is contaminated with radioactive material may be infeasible. On the other hand, the costs of cleaning up an elementary school may be considered justified by their benefits: Protecting children and returning to daily activities and a sense of normalcy. Of course, the feasibility and cost-effectiveness of an option may change in the future.

(4) Make a Decision

A productive stakeholder involvement process can generate important guidance for decision makers. Thus, decisions may reflect negotiation and compromise, as long as risk management goals and intentions are met. In some cases, win-win solutions that allow stakeholders with divergent views to achieve their primary goals are possible. Decision makers should allow the opportunity for public comment on proposed decisions.

Decision makers must weigh the value of obtaining additional information against the need for a decision, however uncertain the

decision may be. Sometimes a decision must be made primarily on a precautionary basis. When sufficient information is available to make a risk management decision, or when additional information or analysis would not contribute significantly to the quality of the decision, the decision should not be postponed.

(5) Take Action To Implement the Decision

When options have been evaluated and decisions made, a plan for action should be developed and implemented. The issuance of protective action recommendations is the responsibility of local officials to protect the public and the environment during emergencies: Long-term cleanup decisions have the same basic risk management framework, but entail substantially more analysis and stakeholder involvement. When government officials and stakeholders have agreed on a strategy, cleanup activities should commence. It may take considerable time for these actions to be completed, and additional decisions may often be necessary as the actions proceed.

(6) Evaluate the Results

Decision makers and other stakeholders must continue to review what risk management actions have been implemented and how effective these actions have been. Evaluating effectiveness involves monitoring and measuring, as well as comparing actual benefits and costs to estimates made in the decision-making stage. The effectiveness of the process leading to implementation should also be evaluated at this stage. Evaluation provides important information about the following: Whether the actions were successful; whether they accomplished what was intended; whether the predicted benefits and costs were accurate; whether any modifications are needed to the risk management plan to improve success; whether any critical information gaps hindered success; whether any new information has emerged which indicates that a decision or stage of the framework should be revisited; whether unintended consequences have emerged; how stakeholder involvement contributed to the outcome; and what lessons can be learned to guide future risk management decisions, or to improve the decision-making process.

Evaluation is critical to accountability and to ensure efficient use of valuable but limited resources. Tools for evaluation include environmental and health monitoring, research, analyses of costs and benefits, and discussions with stakeholders.

(b) Technical Advisory Committee

Making decisions on the appropriate cleanup approaches and levels following an RDD or IND incident will undoubtedly be a challenging task for decision makers. As already noted, the technical issues may be complex. Many potentially competing factors will need to be carefully weighed and decision makers should expect public anxiety in the face of a terrorist act involving radioactive materials. Different regulatory authorities and organizations historically have taken different cleanup approaches for radioactively contaminated industrial sites. Given this context, decision makers will need to determine how best to obtain the necessary technical input to support these decisions and demonstrate to the public that the final decisions are credible and sound.

There are a variety of ways to approach this situation, and decision makers will need to tailor the process to particular site circumstances. This section describes one approach that is available to decision makers, which is based on the ''ad hoc'' mechanisms used for coordinating interagency expertise and assessing the effectiveness in general of the cleanup in response to the 2001 anthrax attacks in Washington, DC. For significant decontamination efforts, the key decision makers may choose to convene an independent committee of technical experts to conduct a deliberative and comprehensive post-decontamination review. The committee would evaluate the effectiveness of the decontamination process and make recommendations on whether the decontaminated areas or items may be reoccupied or reused. It is important to note that although this review may enhance the scientific credibility of the final outcome, final cleanup decisions rest with decision makers.

The committee may consist of experts from Federal agencies, State and tribal public health and environmental agencies, universities and private industries, the local health department, and possibly representatives of local workers and the community. To maximize objectivity, the committee should be an independent group that will provide input to the decision makers, not be a part of the decision-making team.

The scientific expertise in the committee should reflect the needs of the decision makers in all aspects of the decontamination process (*e.g.*, environmental sampling, epidemiology, risk assessment, industrial hygiene, statistics, health physics, and engineering). Agencies on the committee may also have representatives on the technical working group, but in order to preserve the objectivity of the committee, it is best to designate different experts to serve on each group. The chair and co-chair of the committee should not be a part of the decision-making group at the site.

The decision makers should develop a charter for the committee that specifies the tasks committee members are intended to perform, the issues they are to consider, and the process they will use in arriving at conclusions and recommendations. The charter should also specify whether the individual members are expected to represent the views of their respective agencies, or just their own opinions as independent scientific experts. Consensus among committee members is desirable, but may not be possible. If consensus cannot be achieved, the charter should specify how decision makers expect the full range of opinions to be reflected in the final committee report.

In general, the technical peer review committee would evaluate pre- and post-decontamination sampling data, the decontamination plan, and any other information key to assessing the effectiveness of the cleanup. Based on this evaluation, the committee would make recommendations to the decision makers on whether cleanup has reduced contamination to acceptable levels, or whether further actions are needed before re-occupancy.

Appendix 3—Federal Cleanup Implementation

This appendix provides a federally-recommended approach for environmental cleanup after an RDD or IND incident to accompany the risk management principles outlined in Appendix 2. This approach describes how State and local governments may coordinate with Federal agencies, and the public, consistent with the National Response Framework (NRF). The approach does not attempt to provide detailed descriptions of State and local roles and expertise. It is assumed those details will be provided in State and local level planning documents that address radiological/nuclear terrorism incidents.

This site cleanup approach is intended to function under the NRF with Federal agencies performing work consistent with their established roles, responsibilities, and capabilities. Agencies should be tasked to perform work under the appropriate Emergency Support Function, as a primary or support agency, as described in the NRF. This plan is also designed to be compatible with the Incident Command/Unified Command (IC/UC) structure embodied in the National Incident Management System (NIMS).

The functional descriptions and processes in this approach are provided to address the specific needs and wide range of potential impacts of an RDD or IND incident. During the intermediate phase, site cleanup planners should begin the process described below, under the direction of the on-site IC/UC, and in close coordination with Federal, State and local officials. After early and intermediate phase activities have come to conclusion and only long-term cleanup activities are ongoing, the IC/UC structure may continue to support planning and decision-making for the long-term cleanup. The IC/UC may make personnel changes and structural adaptations to suit the needs of a lengthy, multifaceted and highly visible remediation process. For example, a less formal and structured command, more focused on technical analysis and stakeholder involvement, may be preferable for extended site cleanup than what is required under emergency circumstances.

Radiological and nuclear terrorism incidents cover a broad range of potential scenarios and impacts. This appendix assumes that the Federal Government is a primary funding agent for site cleanup. In particular, the process described for the late phase in section (d)(4) of this document assumes an incident of relatively large size. For smaller incidents, all of the elements in this section may not be warranted. The process should be tailored to the circumstances of the particular incident. Decision makers should recognize that for some radiological/nuclear terrorist incidents, states will take the primary leadership role and contribute significant resources toward cleanup of the site. This section does not

address such a scenario, but states may choose to use the process described here.

This implementation plan does not address law enforcement coordination during terrorism incident responses, including how the FBI will manage on-scene activities immediately following an act of terror. Agencies' roles and responsibilities will be implemented according to the NRF and supporting documents. Also, victim triage and other medical response procedures are beyond the scope of this Guidance. The plan presented in this appendix is not intended to impact site cleanups occurring under other statutory authorities such as EPA's Superfund program, the NRC's decommissioning program, or State-administered cleanup programs.

Cleanup Activities Overview

As described earlier in the document, radiological/nuclear emergency responses are often divided roughly into three phases: (1) The early phase, when the plume is active and field data are lacking or not reliable; (2) the intermediate phase, when the plume has passed and field data are available for assessment and analysis; and (3) the late phase, when long-term issues are addressed, such as cleanup of the site. For purposes of this appendix, the response to a radiological or nuclear terrorism incident is divided into two separate, but interrelated and overlapping, processes. The first is comprised of the early and intermediate phases of response, which consists of the immediate and near-term on-scene actions of State, local, and Federal emergency responders under the IC/UC. On-scene actions include incident stabilization, lifesaving activities, dose reduction actions for members of the public and emergency responders, access control and security, emergency decontamination of persons and property, ''hot spot'' removal actions, and resumption of basic infrastructure functions.

The second process pertains to environmental cleanup, which is initiated soon after the incident (during the intermediate phase) and continues into the late phase. The process starts with convening stakeholders and technical subject matter experts to begin identifying and evaluating options for the cleanup of the site. The environmental cleanup process overlaps the intermediate phase activities described above and should be coordinated with those activities. This process is interrelated with the ongoing intermediate phase activities, and the intermediate phase protective actions continue to apply through the late phase until cleanup is complete.

Cleanup planning and discussions should begin as soon as practicable after an incident to allow for selection of key stakeholders and subject matter experts, planning, analyses, contractual processes, and cleanup activities. States may choose to pre-select stakeholders for major incident recovery coordination. These activities should proceed in parallel with ongoing intermediate phase activities, and coordination between these activities should be maintained. Preliminary remediation activities during the intermediate phase—such as emergency removals, decontamination, resumption of basic infrastructure function, and some return to normalcy in accordance with intermediate phase PAGs—should not be delayed for the final site remediation decision.

A process for addressing environmental contamination that applies an optimization process for site cleanup is presented below. As described in this document, optimization is a flexible process in which numerous factors are considered to achieve an end result that considers local needs and desires, health risks, costs, technical feasibility, and other factors. The general process outlined below provides decision makers with input from both technical experts and stakeholder representatives, and also provides an opportunity for public comment. The extent and complexity of the process for an actual incident should be tailored to the needs of the specific incident; for smaller incidents, the workgroups discussed below may not be necessary.

The goals of the process described below are: (1) Transparency—the basis for cleanup decisions should be available to stakeholder representatives, and to the public at large; (2) inclusiveness—representative stakeholders should be involved in decision-making activities; (3) effectiveness—technical subject matter experts should analyze remediation options, consider established dose and risk benchmarks, and assess various technologies in order to assist in identifying a final solution that is optimal for the incident; and (4) shared accountability—the final decision to proceed will be made jointly by Federal, State, and local officials.

Under the NRF, FEMA may issue mission assignments to the involved Federal agencies, as appropriate, to assist in response and recovery. Additional funding may be provided to State/local governments to perform response/recovery activities through other mechanisms. The components of the process are as follows:

(a) General Management Structure

Planning for the long-term cleanup should begin during the intermediate phase, and at that time, a traditional NIMS response structure should still be in place. However, NIMS was developed specifically for emergency management and may not be the most efficient response structure for long-term cleanup. If the cleanup will extend for years, the IC/UC may decide to transition at some point to a different long-term project management structure.

Under the NRF and NIMS, incidents are managed at the lowest possible jurisdictional level. In most cases, this will be at the level of the Incident Command or Unified Command (IC/UC). The IC/UC directs on-scene tactical operations. Responding local, State, and Federal agencies are represented in the IC/UC and Incident Command Post in accordance with NIMS principles regarding jurisdictional authorities, functional responsibilities, and resources provided. For INDs, and large RDDs, multiple Incident Command Posts (ICPs) may be established to manage the incident with an Area Command or Unified Area Command supporting the ICPs and prioritizing resources and activities among them. If the RDD/IND incident happens on a Federal facility or involves Federal materials, the representatives in the UC may change appropriately and the response will be conducted according to the applicable Federal procedures.

Issues that cannot be resolved at the IC/UC or Unified Area Command level may be raised with the JFO and JFO Unified Coordination Group for resolution. The JFO coordinates and prioritizes Federal resources, and when applicable, issues mission assignments to Federal agencies under the Stafford Act. Issues that cannot be resolved at the JFO level may be raised to the DHS NOC, senior-level interagency management groups, and the White House Homeland Security Council.

Day-to-day tactical management, planning, and operations for the RDD/IND cleanup process will be managed at the IC/UC level, but for large-scale cleanups, it is expected that the JFO Unified Coordination Group will review proposed cleanup plans and provide strategic and policy direction. The agency(s) with primary responsibility for site cleanup should be represented in the JFO Unified Coordination Group. The IC/UC will need to establish appropriate briefing venues as the cleanup process proceeds, including the affected mayor(s) and Governor(s).

The discussion below assumes a traditional NIMS IC/UC structure; if the IC/UC transitions later to a different management structure for a longer-term cleanup, the IC/UC would need to determine the appropriate way to incorporate the workgroups described below into that structure.

Appendix 2 presented the general steps in the cleanup process: Analyze the risks, examine the options, make and implement a decision, evaluate the results. This process will be managed by the IC/UC, who ultimately determines the structure and organization of the Incident Command Post, but the discussion below provides one recommended approach for managing the cleanup process within a NIMS ICS response structure. The Incident Command Post Planning Section has the lead for response planning activities, working in conjunction with other sections, and would have the lead for development of the optimization analysis, working closely with the Operations Section. The NIMS describes the units that make up the Planning Section, and allows for additional units to be added depending on site-specific needs. NIMS states that for incidents involving the need to coordinate and manage large amounts of environmental sampling and analytical data from multiple sources, an Environmental Unit may be established within the Planning Section to facilitate interagency environmental data management, monitoring, sampling, analysis, assessment, and site cleanup and waste disposal planning. RDD/IND incidents would involve the collection of not only large amounts of radiological data, but also data related to other environmental and health and safety hazards, and would therefore likely warrant the establishment of an Environmental Unit in the Planning Section. Planning for FRMAC radiological sampling and monitoring activities will be integrated into the Planning Section, and coordinated with other Situation and Environmental Unit data management activities.

The IC/UC would assign the responsibility for coordinating and development of the optimization analysis to a specific unit. For incidents in which the contaminated area is small and the analysis is straightforward, the IC/UC may choose to assign such responsibilities to the Environmental Unit. On the other hand, for large incidents requiring more complicated tradeoffs or the evaluation of cleanup goals with broad implications, the IC/UC may choose to establish a separate unit in the Planning Section (for example, a Cleanup Planning Unit) to coordinate the development of the optimization analysis. The IC/UC may then convene a technical working group and a stakeholder working group, managed by the Environmental or Cleanup Planning Unit, to analyze cleanup options and develop recommendations. The Environmental or Cleanup Planning Unit would coordinate working group processes and interactions and report the results of the optimization analysis and workgroup efforts to the IC/UC through the Planning Section Chief.

The development and completion of the optimization analysis is expected to be an iterative process, and for large incidents, the cleanup will likely proceed in phases, most likely from the ''outside in'' toward the most contaminated areas. The extent of the analysis and process used to develop it would be tailored to the needs of the specific incident, but the following working groups may be convened by the IC/UC to assist decision makers in the optimization process, particularly for large or complex cleanups.

(1) Technical Working Group

A technical working group should be convened as soon as practicable, normally within days or weeks of the incident. The technical working group would be managed by the Planning Section Unit that is assigned responsibility for the optimization analysis. The technical working group may or may not be physically located at the ICP. The group may review data and documents, provide input electronically, and meet with incident management officials. The group may also be asked to participate in meetings with the JFO Unified Coordination Group if needed.

Function: The technical working group provides multi-agency, multi-disciplinary expert input on the optimization analysis, including advice on technical issues, analysis of relevant regulatory requirements and guidelines, risk analyses, and development of cleanup options. The technical working group would provide expert technical input to the IC/UC; it would not be a decision-making body.

Makeup: The technical working group should include selected Federal, State, local, and private sector subject matter experts in such fields as environmental fate and transport modeling, risk analysis, technical remediation options analysis, cost, risk and benefit analysis, health physics/radiation protection, construction remediation practices, and relevant regulatory requirements. The exact selection and balance of subject matter experts is incident-specific. The Advisory Team for the Environment, Food, and Health is comprised of Federal radiological experts in various fields who may warrant representation on the technical working group.

(2) Stakeholder Working Group

The stakeholder working group should be convened as soon as practicable, normally within days or weeks of the incident. The stakeholder working group would be managed by the Planning Section Unit that is assigned responsibility for the optimization analysis. The IC/UC may direct the Public Information Officer (who would coordinate with the JIC) to work with the group, including establishing a process for the group to report out its recommendations. How and where the stakeholder working group would meet to review information and provide its input would need to be determined in conjunction with the group members. The stakeholder working group may also be asked to participate in meetings with the JFO Unified Coordination Group if needed.

Makeup: The stakeholder working group should include selected Federal, State, and local representatives; local non-governmental representatives; and local/regional business stakeholders. The exact selection and balance of stakeholders is incident specific.

Function: The function of the stakeholder working group is to provide input to the IC/UC concerning local needs and desires for site recovery, proposed cleanup options, and other recommendations. The group should present local goals for the use of the site, prioritizing current and future potential land uses and functions, such as utilities and infrastructure, light industrial, downtown business, and residential land uses. The stakeholder working group would not be a decision-making body.

(b) Activities

(1) Optimization and Recommendations

The IC/UC directs the management of the optimization analysis through the Planning Section. Technical and stakeholder working groups assist in performing analyses and developing cleanup options and provide input to the IC/UC, and may be asked to participate in meetings with the JFO Unified Coordination Group if needed. The IC/UC reviews the options described in the optimization analysis and selects a proposed approach for site cleanup, in close coordination with Federal, State and local officials. Again, depending on the incident size, it may be necessary to conduct the cleanup in phases. Thus, decisions on cleanup approaches may also be made in phases. As appropriate for the magnitude of the cleanup task, the IC/UC would brief relevant Federal, State, and local government officials on proposed cleanup plans for approval. This may involve the office of the affected mayor and Governor. At the Federal level, it may involve the JFO Unified Coordination Group and higher-level officials.

(2) Public Review of Decision

The IC/UC should work with the POI and JIC to publish a summary of the process, the options analyzed, and the recommendations for public comments. Public meetings should also be convened at appropriate times. Public comments should be considered and incorporated as appropriate. A reconvening of the stakeholder and/or technical working groups may be useful for resolving some issues.

(3) Execute Cleanup

Cleanup activities should commence as quickly as practicable, and allow for incremental reoccupation of areas as cleanup proceeds. For significant decontamination efforts, the IC/UC may choose to employ a technical peer review advisory committee to conduct a review of the effectiveness of the cleanup. The technical peer review advisory committee is discussed in more detail in Appendix 2.

Appendix 4—Operational Guidelines for Implementation of Protective Action Guides and Other Activities in RDD or IND Incidents

During all phases of an incident, many decisions will need to be made at the field-level, such as making protective action decisions, opening critical infrastructure, limited re-entry of citizens to homes or businesses, release of personal property, and others. This appendix presents operational guidelines being developed to assist decision makers and emergency responders in implementing protective actions and making other on-site decisions.[7] Operational guidelines are levels of radiation or concentrations of radionuclides that can be accurately measured by radiation detection and monitoring equipment that can then be compared to PAGs, or field-level radiation dose decision points (such as for the release of personal property) to quickly determine what action should be taken. In most situations, the operational guidelines will be given in terms of external gamma rates or media-specific (*e.g.*, surfaces, soil, or water) radionuclide concentration units. Both external and internal exposure potential were considered in the development of the operational guidelines.

This appendix discusses the operational guidelines qualitatively and does not provide actual numeric values. The operational guidelines are being developed to provide reasonable assurance that field-level radiation dose decision points and the PAGs recommended in this document can be met under different circumstances. The operational guidelines also address, to some extent, the impact of protective actions, such as controlling wash water after rinsing vehicles to remove contamination. Actual conditions may warrant development of incident-specific guidelines. To support this need, the RESRAD–RDD[8] software tool was developed to allow for easy and timely calculation of site-specific operational

[7] For purposes of this appendix, ''relocation area'' refers to an area that local officials have determined is not safe for prolonged occupation by the public, based on the intermediate phase PAGs, and have recommended that the public be relocated.

[8] RESRAD–RDD is a computer modeling tool developed by the U.S. Department of Energy for calculating radiation concentrations on different media, and doses and dose rates following an RDD incident.

guidelines that can be tailored to the specific emergency and the required response.

The operational guidelines are organized into seven groups that are generally categorized by the phase of emergency response in which they would be implemented or used for planning purposes. Individual groups are further categorized into subgroups as appropriate. Table 3 summarizes operational guideline groups and subgroups. A summary description of these groups and subgroups is provided below. Detailed descriptions of the operational guidelines, to include their technical derivation, intended application, and tools to assist in their application, are provided in the Preliminary Report on Operational Guidelines Developed for Use in Emergency Preparedness and Response to a Radiological Dispersal Device Incidents (DOE/HS–0001, available at *http://www.ogcms.energy.gov*).

TABLE 3—OPERATIONAL GUIDELINES: GROUPS AND SUBGROUPS

Groups	Subgroups
A. Access control during emergency response operations	1. Life and property-saving measures. 2. Emergency worker demarcation.
B. Early-phase protective action	1. Evacuation. 2. Sheltering.
C. Relocation from different areas and critical infrastructure utilization in relocation areas	1. Residential areas. 2. Commercial and industrial areas. 3. Other areas, such as parks and monuments. 4. Hospitals and other health care facilities. 5. Critical transport facilities. 6. Water and sewer facilities. 7. Power and fuel facilities.
D. Temporary access to relocation areas for essential activities	1. Worker access to businesses for essential actions. 2. Public access to residences for retrieval of property, pets, records.
E. Transportation and access routes	1. Bridges. 2. Streets and thoroughfares. 3. Sidewalks and walkways.
F. Release of property from radiologically controlled areas	1. Personal property, except wastes. 2. Waste. 3. Hazardous waste. 4. Real property, such as lands and buildings.
G. Food consumption	1. Early-phase food guidelines. 2. Early-phase soil guidelines. 3. Intermediate-phase soil guidelines. 4. Intermediate- to late-phase soil guidelines.

(a) Group A: Access Control During Emergency Response Operations

These operational guidelines are designed to assist responders in decision making for worker health and safety in the early to intermediate phases of response when the situation has not been fully stabilized or characterized. They are designed to guide responders in establishing radiological control zones or boundaries for the areas directly impacted by the RDD or IND incident where first responders and emergency response personnel are working. They are not intended to restrict emergency worker access, but rather to inform workers of potential radiological hazards that exist in the area and to provide tools to those responsible for radiation protection during response activities. These operational guidelines may be used to restrict the access of nonessential personnel and members of the public to specific areas. Examples of operational guidelines developed in this group include life- and property-saving measures and emergency worker zone demarcation.

Group A operational guidelines are expressed as a series of reference ''stay time'' tables for responders who may have only limited health physics information and personal protective equipment at the time of the response. For example, the health physics information available to them could include or be limited to measurements of the external exposure rate, gross alpha surface contamination, beta/gamma surface contamination, and/or air concentration. Radionuclide-specific correction factors as well as radionuclide-specific and respiratory protection-specific tables are also provided. Stay times are provided for a range of doses (*i.e.*, 0.1 *rem* (.001 *Sv*), 0.5 *rem* (.005 *Sv*), 1 *rem* (.01 *Sv*), 2 *rem* (.02 *Sv*), 5 *rem* (.05 *Sv*), 10 *rem* (.10 *Sv*), 25 *rem* (.25 *Sv*), 100 *rem* (1 *Sv*), many of which correspond to guidelines used for workers and the public).

(b) Group B: Early-Phase Protective Action (Evacuation or Sheltering)

Group B operational guidelines are designed to help decision makers make timely protective action decisions, such as whether to evacuate or shelter the general public in the early phase. These operational guidelines are similar to values presented in the FRMAC Assessment Manual for evacuation and sheltering. Group B operational guidelines are typically expressed as limiting concentrations of radioactivity in surface soil.

(c) Group C: Relocation and Critical Infrastructure Utilization in Affected Areas

These operational guidelines are intended for early-to intermediate-phase protective actions. They are designed for use in deciding whether to relocate the public from affected areas for a protracted period of time. Screening values are provided to delineate areas that exceed the relocation PAGs. These areas include residential areas, commercial/industrial areas, and other areas such as parks, cemeteries, and monuments. Group C operational guidelines also assist in efforts to ensure that facilities critical to the public welfare can continue to operate, if needed. These facilities include hospitals, airports, railroads and ports, water and sewer facilities, and power and fuel facilities. These operational guidelines are typically expressed as soil, building, or street-surface contamination concentrations (*e.g., pCi*/m^2).

(d) Group D: Temporary Access to Relocation Areas for Essential Activities

Group D operational guidelines pertain to intermediate phase protective actions. They are designed to assist in determining constraints necessary to allow for temporary access to restricted (relocation) areas. For example, the public, or owners/employees of businesses, may need temporary access to residences, or commercial, agricultural, or industrial facilities in order to retrieve essential records, conduct maintenance to protect facilities, prevent environmental damage, attend to animals, or retrieve pets. These operational guidelines describe the level and timeframes at which these actions can be taken without supervision or radiological protections. The public or employees may occasionally (*e.g.*, a few days per month) access areas that do not exceed these guidelines. Temporary access to

relocation areas that exceed these levels should be permitted only under the supervision, or with the permission of, radiation protection personnel. The guidelines are typically expressed in terms of stay-times during which the public or employees may access the areas without receiving a predetermined dose.

(e) Group E: Transportation and Access Routes

These operational guidelines apply to intermediate phase actions. They are designed to assist in determining whether transportation routes (*e.g.*, bridges, highways, streets) or access ways (*e.g.*, sidewalks and walkways) may be accessed by the public for general, limited, or restricted use. The relocation PAGs serve as the basis for these operational guidelines. For example, operational guidelines may be defined for industrial or commercial use of various roads, bridges, or access ways. These may be necessary to allow for access between non-relocation areas via a highway that passes through a relocation area or for access to recovery areas in the immediate area of an incident. These operational guidelines assume regular or periodic use and are not appropriate for one-time events, such as evacuation or relocation actions. They are typically expressed as surface contamination concentrations (*e.g., pCi*/m^2).

(f) Group F: Release of Property From Radiologically Controlled Areas

Group F operational guidelines are intended for intermediate to long-term recovery-phase protective actions. During response and recovery operations, property and wastes must be cleared from radiologically controlled areas (relocation areas). Property includes personal property, debris and non-radiological wastes, hazardous waste, and real property (*e.g.*, buildings and lands). These operational guidelines support such actions. Because subsequent retrieval of cleared, or released, properties will be difficult, these levels should be consistent with late-phase cleanup goals wherever practicable. For this reason, they should not be applied to property that will continue to be used within controlled areas. These operational guidelines should also be used for screening property that was located outside the controlled area for possible contamination. In general, the operational guidelines in this group provide reasonable assurance that the cleared property is acceptable for long-term, unrestricted use (or appropriate disposition, in the case of wastes) without further radiological reassessment or control.

For personal property such as vehicles and equipment, the operational guideline values were derived using the ANSI N13.12 standard clearance screening levels.[9] These draft operational guidelines are available for review and use as appropriate at *http://www.ogcms.energy.gov.* The guidelines establish three property categories: at greater than 200 times ANSI N13.12 screening levels, monitored remediation or control is recommended; at levels between 10 and 200 times the levels, self-remediation (conventional washing) of the property is recommended as soon as practical; and below the self-remediation levels, no control or protective action is necessary.

Operational guidelines for real property (buildings and lands) are designed to assist on-scene decision-making, and in development of the cleanup options described in section (d)(4), Late Phase Guidance, of this document. Section (d)(4) on long-term cleanup incorporates the principle of site-specific optimization, and highlights stakeholder involvement and shared accountability. The guidelines for real property are unique in that there is no one specific, predefined numeric criterion (*i.e.*, expressed in terms of concentration, dose, or risk) on which to base decisions. These guidelines are intended to be utilized in the optimization process, which will likely consider the magnitude and extent of the contamination and the radionuclide(s) involved, the proposed long-term land and building use in the affected areas, the need for expedited recovery, public welfare issues, the cost impacts for each proposed cleanup option, the ecological considerations, and other factors. Real property operational guidelines are provided as reference values (*e.g.*, soil and building-surface concentrations or risks) that can be used as a starting point for evaluating options and impacts relative to a range of dose or risk-based benchmarks (*e.g.*, 500, 100, 25, or 4 *millirem* per year; lifetime risk ranges, and others) that could be considered as part of cleanup options analysis. Thus, they are not regulatory dose limits or criteria, but serve as concentration values that provide support to the optimization analyses.

(g) Group G: Food Consumption

Group G operational guidelines apply to early through long-term recovery phase protective actions, as needed. They are designed to aid in decision making about the need for placing restrictions on consumption of contaminated foods or on agricultural products during and following an RDD or IND incident. Four subgroups were developed (Subgroups G.1–G.4; see Table 4A), which are intended for use in conjunction with the operational guidelines in other groups. Subgroup G.1 guidelines pertain to food consumption in the early response phase immediately after an incident. These guidelines can be used to screen against measured concentrations taken from previously harvested food or from animal products exposed during the incident. Subgroup G.1 guidelines also can be used to determine the need for a food embargo, or restrictions on consumption of contaminated foods. Subgroup G.2 guidelines, soil guidelines, also apply to the early phase of response, but they are intended for use in evaluating crops or animal products exposed during the RDD incident (*e.g.*, after the plume has passed). They serve as a comparison with measured concentrations taken from surface soil in which plant foods and fodder had been growing during the incident. Subgroups G.3 and G.4 are intended for use of soil in the intermediate to long-term recovery phases and can be used for placing land use restrictions on agricultural activities after an RDD incident. They can be used to determine if crops can be grown on residually contaminated soil to produce a harvest that would be acceptable for public consumption.

(h) Derivation of Operational Guidelines

Operational guidelines for each group are being derived through a systematic approach in which, (1) applicable release/exposure scenarios for each group were defined, (2) appropriate human receptors for each scenario were identified, and (3) the receptor doses from applicable exposure pathways were estimated. Operational guidelines (Groups A–G; see Table 4A), which correspond to specific PAGs, were derived for 11 potential RDD radionuclides:[10] Am-241, Cf-252, Cm-244, Co-60, Cs-137, Ir-192, Po-210, Pu-238, Pu-239, Ra-226, and Sr-90. The concepts and overarching methodology used to derive operational guidelines for RDD-related radionuclides could also be generally applied, with modifications, to radionuclides associated with an IND.

Additional RDD or IND incident scenarios were analyzed to support the derivation of the operational guideline groups and subgroups described above. Two of these additional scenarios involve the use of water to flush streets and clean vehicles. Accordingly, operational guidelines for street flushing and cleaning contaminated vehicles are also provided. The operational guidelines will be submitted in the **Federal Register** for comment prior to finalization.

Appendix 5—References and Resources

''Access to Employee and Medical Records.'' Occupational Safety and Heath Standards. 29 CFR part 1910.1020.

''Accidental Radioactive Contamination of Human Food and Animal Feeds: Recommendations for State and Local Agencies'', U.S. Department of Health and Human Services, Food and Drug Administration, August 13, 1998.

''Developing Radiation Emergency Plans for Academic, Medical or Industrial Facilities.'' National Council on Radiation Protection and Measurement (NCRP). NCRP Report No. 111 (1991).

''Framework for Environmental Health Risk Management.'' Commission on Risk Assessment and Risk Management (1997).

''FRMAC Radiological Emergency Response Health and Safety Manual'' (May 2001), see, *http://www.nv.doe.gov/nationalsecurity/homelandsecurity/frmac/default.htm*.

''Guidance: Potassium Iodide as a Thyroid Blocking Agent in Radiation Emergencies.'' Food and Drug Administration, 66 FR 64046, Dec. 11, 2001.

''Hazardous Waste Operations and Emergency Response.'' Occupational

[9] The American National Standards Institute (ANSI) produces consensus based national standards. ANSI standard N13.12, Surface and Volume Radioactivity Standards for Clearance, can be found at *http://hps.org/hpssc/N13_12_1999.html*.

[10] These radionuclides were determined by a joint DOE and NRC study to be the most likely sources available for potential terrorist use in an RDD (Interagency Working Group on Radiological Dispersal Devices, May 2003) (DOE/NRC 2003).

Safety and Health Standards. 29 CFR part 1910.120.
''Health Effects Summary Tables,'' Environmental Protection Agency, *http://www.epa.gov/radiation/heast/*.
''Health Risks from Exposure to Low Levels of Ionizing Radiation: BEIR VII Phase 2.'' National Research Council of The National Academies (2006).
''Ionizing Radiation.'' Occupational Safety and Health Standards. 29 CFR part 1910.1096.
''Key Elements of Preparing Emergency Responders for Nuclear and Radiological Terrorism.'' National Council on Radiation Protection and Measurements (NCRP). NCRP Commentary No. 19 (2005).
''Management of Equipment Contaminated with Depleted Uranium or Radioactive Commodities.'' Army Regulation 700–48 (2002).
''Management Of Terrorist Events Involving Radioactive Material.'' National Council on Radiation Protection and Measurements (NCRP). NCRP Report No. 138 (2001).
''Manual of Protective Action Guides and Protective Actions for Nuclear Incidents'' (1992 EPA PAG Manual). EPA 400–R–92–001 (1992).
National Response Framework, U.S. Department of Homeland Security (2008).
National Incident Management System, U.S. Department of Homeland Security (2007).
''National Oil and Hazardous Substances Pollution Contingency Plan.'' 40 CFR part 300.
''Occupational Radiation Protection.'' Department of Energy. 10 CFR part 835.
''Preliminary Report on Operational Guidelines Developed for Use in Emergency Preparedness and Response to a Radiological Dispersal Device Incident.'' DOE/HS–0001. *http://www.ogcms.energy.gov*.
''Protective Action Guides for Radiological Dispersal Device (RDD) and Improvised Nuclear Device (IND) Incidents; Notice.'' 71 FR 174, Jan. 3, 2006.
''Radiation Protection Guidance to Federal Agencies for Occupational Exposure.'' Presidential Directive. 52 FR 2822, Jan. 27, 1987.
''Radiological Dispersal Devices: An Initial Study to Identify Radioactive Materials of Greatest Concern and Approaches to their Tracking, Tagging, and Disposition.'' DOE/NRC Interagency Working Group on Radiological Dispersal Devices, Report to the NRC and the Secretary of Energy (2003).
''Reporting and Recording Occupational Injuries and Illnesses.'' U.S. Department of Energy Occupational Safety and Health Standards. 29 CFR part 1904.
''Risks from Low-Level Environmental Exposure to Radionuclides,'' Federal Guidance Report 13, Environmental Protection Agency, January 1998, EPA 402–R–97–014.
''Standards for Cleanup Of Land and Buildings Contaminated with Residual Radioactive Materials from Inactive Uranium Processing Sites.'' Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings. 40 CFR part 192.10–12.
''Standards for Protection Against Radiation.'' Nuclear Regulatory Commission. 10 CFR part 20.
''Surface and Volume Radioactivity Standards for Clearance.'' American National Standards Institute (ANSI), N13.12 (1999).

Appendix 6—Acronyms/Glossary

AMS Aerial Measuring System—A DOE technical asset consisting of both fixed wing and helicopter systems for measuring radiation on the ground; a deployable asset of the NIRT.

ALARA As low as reasonably achievable—A process to control or manage radiation exposure to individuals and releases of radioactive material to the environment so that doses are as low as social, technical, economic, practical, and public welfare considerations permit.

ANSI American National Standards Institute.

ARS Acute Radiation Syndrome.

CERCLA Comprehensive Environmental Response, Compensation, and Liability Act, commonly known as Superfund. This legislation was enacted by Congress in 1980 to protect households and communities from abandoned toxic waste sites.

CFR Code of Federal Regulations.

CMS Consequence Management Site Restoration, Cleanup and Decontamination Subgroup.

DEST Domestic Emergency Support Team—A technical advisory team designed to pre-deploy and assist the FBI Special Agent in Charge. The DEST may deploy after an incident to assist the FBI.

DHS U.S. Department of Homeland Security.

DIL Derived Intervention Level—The concentration of a radionuclide in food expressed in Becquerel/kg which, if present throughout the relevant period of time (with no intervention), could lead to an individual receiving a radiation dose equal to the PAG.

DOD U.S. Department of Defense.

DOE U.S. Department of Energy.

DRL Derived Response Level—A level of radioactivity in an environmental medium that would be expected to produce a dose equal to its corresponding PAG.

EMP Electromagnetic Pulse—Electromagnetic radiation from a nuclear explosion.

EMS Emergency Medical Service.

EOC Emergency Operations Center—A response entity's central command and control center for carrying out emergency management functions.

EPA U.S. Environmental Protection Agency.

ESF Emergency Support Function—The ESFs provide the structure for coordinating Federal interagency support for domestic incident response.

FBI Federal Bureau of Investigation, U.S. Department of Justice.

FCO Federal Coordinating Officer—Appointed by the Director of the Federal Emergency Management Agency, on behalf of the President, to coordinate federal assistance to a state affected by a disaster or emergency.

FDA Food and Drug Administration, U.S. Department of Health and Human Services.

FRMAC Federal Radiological Monitoring and Assessment Center—A coordinating center for Federal, State, and local field personnel performing radiological monitoring and assessment—specifically, providing data collection, data analysis and interpretation, and finished products to decision makers. The FRMAC is a deployable asset of the NIRT administered by DOE. For more information, see *http://www.nv.doe.gov/nationalsecurity/homelandsecurity/frmac/default.htm*.

FRN **Federal Register** Notice.

Gy One *gray* is equal to an absorbed dose (mean energy imparted to a unit of matter mass) of 1 *joule/kilogram*. 1 *gray* (*Gy*) = 10,000 *erg/g* = 100 *rad*.

HHS U.S. Department of Health and Human Services.

HAZWOPER Hazardous Waste Operations and Emergency Response Standard (29 CFR 1910.120).

HSPD Homeland Security Presidential Directive—Executive Order issued to the Federal agencies by the President on matters pertaining to Homeland Security.

IC/UC Incident Command/Unified Command—A system to integrate various necessary functions to respond to emergencies. The system is widely used by local responders. Under Unified Command, multiple jurisdictional authorities are integrated.

ICP Incident Command Post—The field location where the primary functions are performed. The ICP may be co-located with the incident base or other incident facilities.

ICRP International Commission on Radiological Protection.

ICS Incident Command System—A standardized, on-scene, all-hazard incident management concept. ICS is based upon a flexible, scalable response organization providing a common framework within which people can work together effectively.

IND Improvised Nuclear Device—An illicit nuclear weapon that is bought, stolen, or otherwise obtained from a nuclear State, or a weapon fabricated by a terrorist group from illegally obtained fissile nuclear weapons material and produces a nuclear explosion.

JFO Joint Field Office—The operations of the various Federal entities participating in a response at the local level should be collocated in a Joint Field Office whenever possible, to improve the efficiency and effectiveness of Federal incident management activities.

JFO Unified Coordination Group JFO structure is organized, staffed and managed in a manner consistent with NIMS principles and is led by the Unified Coordination Group. Personnel from Federal and State departments and agencies, other jurisdictional entities and private sector businesses and NGOs may be requested to staff various levels of the JFO, depending on the requirements of the incident.

JIC Joint Information Center—A focal point for the coordination and provision of

information to the public and media concerning the Federal response to the emergency.

JOC Joint Operations Center—The focal point for management and coordination of local, State and Federal investigative/law enforcement activities.

KI Potassium Iodide.

LNT or LNT model—Linear no-threshold dose-response for which any dose greater than zero has a positive probability of producing an effect (*e.g.* , mutation or cancer). The probability is calculated either from the slope of a linear (L) model or from the limiting slope, as the dose approaches zero, of a linear-quadratic (LQ) model.

MERRT Medical Emergency Radiological Response Team—Provides direct patient treatment, assists and trains local health care providers in managing, handling, and treatment of radiation exposed and contaminated casualties, assesses the impact on human health, and provides consultation and technical advice to local, State, and Federal authorities.

NCP National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300)—The Plan provides the organizational structure and procedures for preparing for and responding to discharges of oil and releases of hazardous substances, pollutants, and contaminants.

NCRP National Council on Radiation Protection and Measurements.

NIEHS National Institute for Environmental Health Sciences.

NIMS National Incident Management System—The Homeland Security Act of 2002 and HPSD–5 directed the DHS to develop NIMS. The purpose of the NIMS is to provide a consistent nationwide approach for Federal, State, and local governments to work effectively and efficiently together to prepare for, respond to, and recover from domestic incidents.

NIRT Nuclear Incident Response Team—Created by the Homeland Security Act of 2002, the NIRT consists of radiological emergency response assets of the DOE and the EPA. When called upon by the Secretary for Homeland Security for actual or threatened radiological incidents, these assets come under the ''authority, direction, and control'' of the Secretary.

NOC National Operations Center.

NPP Nuclear Power Plant.

NRC U.S. Nuclear Regulatory Commission.

NRF National Response Framework—The successor to the National Response Plan. The Framework presents the doctrine, principles, and architecture by which our nation prepares for and responds to all-hazard disasters across all levels of government and all sectors of communities.

OSHA Occupational Safety and Health Administration, U.S. Department of Labor.

PAG Protective Action Guide—The projected dose to a reference individual, from an accidental or deliberate release of radioactive material at which a specific protective action to reduce or avoid that dose is recommended.

PFO Principal Federal Official—The PFO will act as the Secretary of Homeland Security's local representative, and will oversee and coordinate Federal activities for the incident.

PIO Public Information Officer—The PIO acts as the communications coordinator or spokesperson within the Incident Command System.

PPE Personal protective equipment.

R Roentgen—Measure of exposure in air.

Rad Radiation absorbed dose. One rad is equal to an absorbed dose of 100 *erg/gram* or 0.01 *joule/kilogram*. 1 *rad* = 0.01 *gray* (*Gy*).

RAP Radiological Assistance Program—A DOE emergency response asset that can rapid deploy at the request of State or local governments for technical assistance in radiological incidents. RAP teams are a deployable asset of the NIRT.

RDD Radiological Dispersal Device—Any device that causes the purposeful dissemination of radioactive material, across an area with the intent to cause harm, without a nuclear detonation occurring.

REAC/TS Radiation Emergency Assistance Center/Training Site—A DOE asset located in Oak Ridge, TN, with technical expertise in medical and health assessment concerning internal and external exposure to radioactive materials. REAC/TS is a deployable asset of the NIRT.

Rem Roentgen Equivalent Man; the conventional unit of radiation dose equivalent. 1 *rem* = 0.01 *sievert* (*Sv*).

REMM Radiation Event Medical Management—A Web-based algorithm providing just-in-time information for medical responders. It is also useful for education and training. Developed by the Office of Assistant Secretary for Preparedness and Response and the National Library of Medicine. Available at *http://www.remm.nlm.gov*.

RERT Radiological Emergency Response Team—An EPA team trained to do environmental sampling and analysis of radionuclides. RERT provides assistance during responses and takes over operation of the FRMAC from DOE at a point in time after the emergency phase. RERT is a deployable asset of the NIRT.

Shelter-in-Place The use of a structure for radiation protection from an airborne plume and/or deposited radioactive materials.

SI International System of Units.

Stakeholder A stakeholder is anybody with an interest (a 'stake') in a problem and its solution. The involvement of stakeholders (*i.e.*, parties who have interests in and concern about a situation) is seen as an important input to the optimization process. It is a proven means to achieve incorporation of values into the decision-making process, improvement of the substantive quality of decisions, resolution of conflicts among competing interests, building of shared understanding with both workers and the public, and building of trust in institutions. Furthermore, involving all concerned parties reinforces the safety culture, and introduces the necessary flexibility in the management of the radiological risk that is necessary to achieve more effective and sustainable decisions.

Sv *Sievert;* the SI unit of radiation dose equivalent. 1 *Sv* = 100 *rem*.

TEDE Total effective dose equivalent—The sum of the effective dose equivalent from external radiation exposure and the committed effective dose equivalent from internal exposure.

Dated: July 18, 2008.

Michael Chertoff,

Secretary, U.S. Department of Homeland Security.

[FR Doc. E8–17645 Filed 7–31–08; 8:45 am]

BILLING CODE 9110–21–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Extension of Agency Information Collection Activity Under OMB Review: TSA Customer Comment Card

AGENCY: Transportation Security Administration, DHS.

ACTION: 30 Day Notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on May 9, 2008, 73 FR 26404. TSA uses a customer comment card to collect passenger comments including complaints, compliments, and suggestions at airports.

DATES: Send your comments by September 2, 2008. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Joanna Johnson, Communications Branch, Business Management Office, Operational Process and Technology, TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220; telephone

(571) 227–3651; facsimile (571) 227–3588.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: TSA Customer Comment Card.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0030.

Forms(s): TSA Customer Comment Card.

Affected Public: Airline Passengers.

Abstract: The Transportation Security Administration (TSA) is seeking renewal of the TSA Customer Comment Card information collection. The card is being used by TSA at airports to collect customer comments, complaints, compliments, and suggestions. This collection continues a voluntary program for passengers to provide feedback to TSA regarding their experiences with TSA security procedures. This collection of information allows TSA to evaluate and address customer concerns about security procedures and policies.

Number of Respondents: 150,000.

Estimated Annual Burden Hours: 12,500.

Issued in Arlington, Virginia, on July 28, 2008.

Kriste Jordan,

Program Manager, Business Improvements and Communications, Office of Information Technology.

[FR Doc. E8–17646 Filed 7–31–08; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5186–N–31]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

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

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7262, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: July 24, 2008.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. E8–17360 Filed 7–31–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Interim Steering Committee for the National Climate Change and Wildlife Science Center

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of open public meeting.

SUMMARY: Pursuant to Public Law 106–503, the Interim Steering Committee for the National Climate Change and Wildlife Science Center will hold a meeting to discuss priority wildlife climate change research needs of land management and natural resources agencies. Agenda topics will be provided under the **SUPPLEMENTARY INFORMATION** section of this notice. Meetings of the Interim Steering Committee for the National Climate Change and Wildlife Science Center are open to the public.

ADDRESSES: The meeting location is Main Interior Building, Department of the Interior 1849 C Street, NW., Washington, DC 20240, North Penthouse, 7th floor.

DATES: August 14, 2008, commencing at 9:15 a.m. and adjourning at 12 p.m.

FOR FURTHER INFORMATION CONTACT: Dr. Robin P. White, U.S. Geological Survey, 12201 Sunrise Valley Drive, Reston, Virginia 20192, 304–724–4503, *Rpwhite@usgs.gov*.

SUPPLEMENTARY INFORMATION: The National Climate Change and Wildlife Science Center Interim Steering Committee is comprised of members from Federal and State government. The Interim Steering Committee shall advise the Director of the U.S. Geological Survey (USGS) on matters relating to the development of the National Climate Change and Wildlife Science Center.

Matters To Be Considered: The meeting will begin with Federal, State and non-governmental organizations provided an opportunity to outline priority wildlife climate change research needs. The committee will discuss and identify common themes and unique needs for support of land and resource management agencies. The meeting will conclude with identification of next steps for implementation of the National Climate Change and Wildlife Science Center.

Dated: July 25, 2008.

Sue Haseltine,

Associate Director for Biology.

[FR Doc. E8–17537 Filed 7–31–08; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–19329–B; AK–964–1410–HY–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be

issued to Mendas Chā-Āg Native Corporation. The lands are in the vicinity of Healy Lake, Alaska, and are located in:

Copper River Meridian, Alaska

T. 26 N., R. 5 E.,
Secs. 21 and 22;
Secs. 27, 28, and 29;
Secs. 32 and 33.
Containing 4,325.95 acres.

Fairbanks Meridian, Alaska

T. 12 S., R. 15 E.,
Secs. 13 and 24.
Containing 819.88 acres.

T. 11 S., R. 16 E.,
Sec. 12.
Containing 640 acres.
Aggregating 5,785.83 acres.

The subsurface estate in these lands will be conveyed to Doyon, Limited, when the surface estate is conveyed to Mendas Chā-Āg Native Corporation. Notice of the decision will also be published four times in the Fairbanks Daily News-Miner.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until September 2, 2008 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION, CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Barbara Opp Waldal,

Land Law Examiner, Land Transfer Adjudication I.

[FR Doc. E8–17611 Filed 7–31–08; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Cost Code: 1220 AL]

Notice of Availability of Record of Decision for the Truckhaven Geothermal Leasing Area Final Environmental Impact Statement, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Record of Decision.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 *et seq.*), the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. 1701 *et seq.*) and the Bureau of Land Management (BLM) management policies, the BLM announces the availability of the Record of Decision (ROD) for the Truckhaven Geothermal Leasing Area, Imperial County, managed by the El Centro Field Office. The El Centro Field Manager has signed the ROD, which constitutes the final decision of the BLM.

DATES: The appeal period will end 30 days after publication of this notice in accordance with 43 CFR 4.411(a).

ADDRESSES: Copies of the ROD are available upon request from the Field Manager, El Centro Field Office, Bureau of Land Management, 1661 S. 4th Street, El Centro, CA 92243 or via the Internet at *http://www.ca.blm.gov/elcentro*. Copies of the ROD are available for public inspection at the following locations:

- Bureau of Land Management, California State Office, 2800 Cottage Way, Suite W–1834, Sacramento, CA 95825.
- Bureau of Land Management, El Centro Field Office, 1661 S. 4th Street, El Centro, CA 92243.
- Bureau of Land Management, California Desert District, 22835 Calle San Juan De Los Lagos, Moreno Valley, CA 92553.

FOR FURTHER INFORMATION CONTACT: John Dalton, Truckhaven Geothermal Leasing Area EIS Project Manager, at (951) 691–5200, Bureau of Land Management, 22835 Calle San Juan De Los Lagos, Moreno Valley, CA 92553; *john_dalton@ca.blm.gov*.

SUPPLEMENTARY INFORMATION: The Truckhaven Geothermal Leasing Area encompasses approximately 14,731 acres of Federal minerals in western Imperial County, California, north of State Route 78 and generally west and south of County Highway S–22. The area is part of the California Desert Conservation Area. The main issues addressed in the Final EIS were geothermal resource leasing, recreation, and special status species. Three alternatives were analyzed in the Final EIS: (1) No action, which would not lease any geothermal resources; (2) leasing only lands with existing noncompetitive lease applications; and (3) the proposed action, which would offer all BLM managed lands within this area for lease, subject to certain stipulations and mitigation measures to be applied either at lease issuance or at the development stage.

After careful consideration of all factors, including balancing the need for renewable energy, the need to protect biological, cultural and visual values, and the need to maintain areas for recreational opportunities associated with the Ocotillo Wells State Vehicle Recreation Area, the BLM has selected Alternative 3 as the preferred alternative. Some areas will be required by stipulation to unitize as appropriate in order to consolidate production facilities and, thereby, minimize surface impacts. Two power plants are anticipated to be constructed within the planning area, which would involve an initial disturbance of approximately 502 acres. Following construction, approximately 95 acres would be reclaimed, leaving approximately 405 acres disturbed by roads, well pads, pipelines, and the two plants. Various site-specific Conditions of Approval will be imposed at the development stage to protect other resources and uses.

Comments on the Truckhaven Geothermal Leasing Area Draft EIS received from the public and via internal BLM review were incorporated into the Final EIS. These comments resulted in corrections, clarifying text, and the addition of new data used in the analysis of impacts. The Final EIS Truckhaven Geothermal Leasing Area addresses comprehensive, long-range decisions for the use and management of geothermal resources in the planning area and management of other resources and uses potentially affected by geothermal resource management decisions. The ROD for this project addresses only BLM's decisions for public lands and resources administered by BLM.

Sean E. Hagerty.

Acting Deputy State Director, Division of Energy and Minerals, BLM—California State Office.

[FR Doc. E8–17556 Filed 7–31–08; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–060–1610–016J]

Notice of Availability of Moab Field Office Proposed Resource Management Plan and Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 and the Federal Land Policy and Management Act of 1976, the Bureau of Land Management (BLM) has prepared a Proposed Resource Management Plan/ Final Environmental Impact Statement (PRMP/FEIS) for the Moab Field Office.

DATES: The BLM planning regulations (43 CFR 1610.5–2) state that any person who meets the conditions as described in the regulations may protest the BLM's PRMP/FEIS. A person who meets the conditions and files a protest must file the protest within 30 days of the date that the Environmental Protection Agency publishes this notice in the **Federal Register**.

ADDRESSES: Copies of the Moab Field Office PRMP/FEIS were sent to affected Federal, state, and local government agencies and to interested parties. Copies of the PRMP/FEIS are available for public inspection at:

Moab Field Office, 82 East Dogwood, Moab, UT, 84532.

Utah State Office, 440 West 200 South, Salt Lake City, UT 84145.

Interested persons may also review the PRMP/FEIS on the Internet at *http://www.blm.gov/ut/st/en/fo/moab/planning.html*. All protests must be in writing and mailed to the following addresses:

Regular Mail: BLM Director (210), Attention: Brenda Hudgens-Williams, P.O. Box 66538, Washington, DC 20035.

Overnight Mail: BLM Director (210), Attention: Brenda Hudgens-Williams, 1620 L Street, NW., Suite 1075, Washington, DC 20036.

FOR FURTHER INFORMATION, CONTACT: Brent Northrup, Moab Field Office, 82 East Dogwood, Moab, UT, 84532; phone: (435)259–2100; or e-mail at: *Brent_Northrup@blm.gov*.

SUPPLEMENTARY INFORMATION: The Moab RMP planning area is located in southeastern Utah. The BLM administers approximately 1.8 million acres of surface estate and 1.9 million acres of Federal mineral estate within the planning area.

The Moab RMP will provide future broad-scale management direction for land use allocations and allowable uses on public lands within the planning area. Implementation of the decisions of the PRMP/FEIS would apply only to BLM-administered public lands and Federal mineral estate. In the Moab Field Office Draft RMP/EIS (DRMP/DEIS), which was released for a 90-day public review and comment period in August 2007, four alternatives were analyzed, including a No Action alternative. These alternatives were developed through issue identification during the scoping process. Such issues included: travel management, recreation, special designations, minerals, non-WSA lands with wilderness characteristics.

The PRMP/FEIS would designate five new Areas of Critical Environmental Concern (ACECs), and the continuation of no existing ACECs, totaling 63,232 acres. Resource use limitations that apply to the proposed ACECs include a range of different prescriptions as described in Table 1 below.

TABLE 1—EVALUATION OF AREAS OF CRITICAL ENVIRONMENTAL CONCERN

Area name	Values of concern	Resource use limitations	Acres
Behind the Rocks	Threatened, sensitive and endangered plants, cultural, scenic.	1, 2, 3, 4, 5, 6, 7, 8	5,201
Cottonwood Diamond Watershed	Natural systems	4, 5 (outside WSA), 6 (outside WSA), 9, 10, 11 (inside WSA), 12, 13, 14 (inside WSA).	35,830
Highway 279 Shafer Basin/Long Canyon	Cultural, scenic, natural systems, wildlife	3, 5, 6, 7, 27 (except Highway 279 and Long Canyon, 1), 28.	13,500
Mill Creek Canyon	Cultural, scenic, natural systems	1, 4, 5, 6, 7, 9, 15, 16, 17, 18, 19, 20, 21, 22.	3,721
Ten Mile Wash	Cultural, natural systems, natural hazards, wildlife.	5, 6, 7, 8, 9 (downstream from Dripping Springs), 12, 23 (at Dripping Springs), 24, 25 (at Green River), 26.	4,980

1. VRM Class I.
2. No Vegetation treatments.
3. Vehicle-based camping, campfires only in campgrounds.
4. No new motorized or mechanized routes.
5. Motorized/ mechanized use limited to designated routes.
6. No surface occupancy for oil and gas leasing.
7. Preclude surface use.
8. No collection of woodland products.
9. Not available for livestock grazing.
10. Closed to vehicle use at the end of Class-B road system.
11. Closed to mechanized and motorized travel.
12. No competitive events.
13. Suspend commercial permits.
14. Closed to oil and gas leasing.
15. No vehicle-based camping.
16. No campfires in riparian areas.
17. No motorized competitive events.
18. Recreational events confined to designated roads.
19. Recreation facility limited to day-use only.
20. No recreational mining.
21. No fuel wood harvesting permits.
22. Campfire wood gathering in upland areas only.
23. Camping in designated sites only.
24. Establish speed limits.
25. Restrict vehicle access.

26. Permits required for groups larger than 25 vehicles or if monitoring indicates long-term damage.
27. VRM Class I.
28. Permitted activities would be confined to main roads within crucial bighorn lambing habitat from April 1 through June 15. This restriction would not apply to filming if the filming meets the minimum impact criteria.

Comments on the Moab Field Office DRMP/DEIS received from the public and internal BLM review were considered and incorporated as appropriate into the PRMP/FEIS. Public comments resulted in the addition of clarifying text, but did not significantly change proposed land use plan decisions.

Instructions for filing a protest with the Director of the BLM regarding the PRMP/FEIS may be found in the Dear Reader Letter of the PRMP/FEIS and at 43 CFR 1610.5–2. E-mail and faxed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. Under these conditions, the BLM will consider the e-mail or faxed protest as an advance copy and it will receive full consideration. If you wish to provide the BLM with such advance notification, please direct faxed protests to the attention of the BLM protest coordinator at 202–452–5112, and e-mails to *Brenda_Hudgens-Williams@blm.gov*. All protests, including the follow-up letter (if e-mailing or faxing) must be in writing and mailed to the appropriate address, as set forth in the **ADDRESSES** section above.

Before including your phone number, e-mail address, or other personal identifying information in your protest, you should be aware that your entire protest—including your personal identifying information—may be made publicly available at any time. While you can ask us in your protest to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Selma Sierra,

Utah State Director.

Authority: 40 CFR 1506.6, 43 CFR 1610.2, 43 CFR 1610.5–1.

[FR Doc. E8–17554 Filed 7–31–08; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–926–1910–BJ–5RSD]

Montana: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of filing of plat of survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Montana State Office, Billings, Montana, (30) days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Marvin Montoya, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669, telephone (406) 896–5124 or (406) 896–5009.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Fort Peck Agency, through the Rocky Mountain Regional Director, Bureau of Indian Affairs, and was necessary to determine Trust and Tribal land.

The lands we surveyed are:

Principal Meridian, Montana

T. 3 S., R. 33 E.

The plat, in 2 sheets, representing the dependent resurvey of a portion of the Buffalo Creek Guide Meridian, through Township 3 South, a portion of the subdivisional lines, a portion of the subdivision of section 18, the adjusted original meanders of the former right and left banks of the Big Horn River, downstream, through section 18, and the subdivision of section 18, and the survey of a portion of the meanders of the present right bank of the Big Horn River, downstream, through section 18, the meanders of the former right and left banks of two relicted channels of the Big Horn River, downstream, through section 18, the limits of erosion, through section 18, the medial line of two relicted channels of the Big Horn River, through section 18, and certain division of accretion and partition lines Township 3 South, Range 33 East, Principal Meridian, Montana, was accepted July 18, 2008.

We will place a copy of the plat, in 2 sheets, and related field notes we described in the open files. They will be available to the public as a matter of information.

If BLM receives a protest against this survey, as shown on this plat, in two sheets, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file this plat, in two sheets, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Dated: July 24, 2008.

Michael T. Birtles,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. E8–17613 Filed 7–31–08; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID 100 1150 MR 241A: DBG081010]

Notice of Public Meeting: Off-Highway Vehicle and Recreation Transportation Management Sub-Group of the Resource Advisory Council to the Boise District, Bureau of Land Management, U.S. Department of the Interior

AGENCY: Bureau of Land Management, U.S. Department of the Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Boise District, Off-Highway Vehicle (OHV) and Recreation Transportation Management Sub-group of the Resource Advisory Council, will hold meetings as indicated below.

DATES: The first meeting will be held August 11, 2008, beginning at 7 p.m. and adjourning at 9 p.m. The meeting will be held in a meeting room at the Owyhee County Historical Museum in Murphy Idaho. A public comment period will be held before the conclusion of the meeting.

FOR FURTHER INFORMATION CONTACT: MJ Byrne, Public Affairs Officer and RAC Coordinator, BLM Boise District, 3948 Development Ave., Boise, ID 83705, Telephone (208) 384–3393.

SUPPLEMENTARY INFORMATION: The five-member Sub-group provides advice to the 15-member Council in the form of recommendations that relate to public concerns regarding Off-Highway Vehicle (OHV) and Recreation Transportation Management actions and issues related to the BLM-managed public lands located in the Boise District. This advice is then forwarded to the Secretary of the Interior, through the BLM, in the form of recommendations. Items on the

agenda include review and discussion of requests for input by BLM during the RAC's Field Tour of the Murphy Sub-region located in Owyhee County. Future sub-group meetings will be held in order to provide opportunities for the public and interested stakeholder groups to continue to provide input into future BLM actions related to OHV and Recreation Transportation Management in this and other areas in the District. Public notice of future meetings will be provided through news releases and announcements in the local media. Agenda items and location may change due to changing circumstances, including wildfire emergencies. All meetings are open to the public. The public may present written comments to the Sub-group. Each Sub-group meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM Coordinators as provided above. Expedited publication is requested to give the public adequate notice.

Dated: July 28, 2008.

Aden L. Seidlitz,

District Manager.

[FR Doc. E8–17658 Filed 7–31–08; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–056–5853–EU; N–83621; 8–08807; TAS:14X5232]

Notice of Realty Action: Direct Sale of Public Lands in Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) proposes to offer by non-competitive sale one parcel of land in northwest Las Vegas, Nevada totaling approximately 5.19 acres to Nevada Power Company (NPC). This land has been examined and found suitable for disposal utilizing direct sale procedures. The authority for the sale is under Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1713 and 1719, respectively, and BLM land sale and mineral conveyance regulations at 43 CFR 2710 and 2720.

DATES: Written comments regarding the proposed sale or the environmental assessment (EA) will be accepted until September 15, 2008.

ADDRESSES: Mail written comments to the BLM Field Manager, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, NV 89130.

FOR FURTHER INFORMATION CONTACT: Manuela Johnson at (702) 515–5224.

SUPPLEMENTARY INFORMATION: The following described land, parcel N–83621, is located in North Las Vegas at the northeast corner of Grand Teton Drive and Aliante Parkway. The parcel is legally described as:

Mount Diablo Meridian, Nevada

T. 19 S., R. 61 E.,

Sec. 8, portion of lot 13 (N1/2SW1/4 of lot 13).

The area described contains 5.19 acres, more or less.

This parcel of land is offered for sale to NPC at no less than the fair market value (FMV) of $467,000 as determined by the authorized officer. An appraisal report has been prepared by a state certified appraiser for the purposes of establishing FMV.

This sale is in conformance with the Las Vegas Resource Management Plan (RMP), approved October 5, 1998. BLM has determined that the proposed action conforms to the land use plan decision, LD–1, in that RMP. The land contains no other known public values. The parcel has not been identified for transfer to the State or any other local government or non-profit organization. The EA, master title plat, map, and approved appraisal report for the proposed sale are available for review at the Las Vegas Field Office.

A direct sale (without competition) may be used when, in the opinion of the authorized officer, a competitive sale is not appropriate and the public interest would best be served by direct sale. Examples include, but are not limited to: (1) A tract identified for sale that is an integral part of a project of public importance and speculative bidding would jeopardize a timely completion and economic viability of the project; and (2) there is a need to recognize an authorized use such as an existing business which could suffer a substantial economic loss if the tract were purchased by other than the authorized user.

An existing NPC authorized site-type right-of-way, N–76305, known as the Grand Teton substation encumbers the entire sale parcel. This substation lies in the northwestern portion of Government Lot 13 and provides support for the community and its continued development in North Las Vegas and Clark County. This substation contributes an essential service to the neighboring area and its surroundings. The substation consists of transformers, insulators, busses, switches, breakers, and distribution feeders. It generates power and electrical energy for use in a one-mile radius. The proponent proposes to construct a concrete wall along the perimeter of the substation.

The sale parcel was analyzed in the ''Las Vegas Land Disposal Boundary Environmental Impact Statement,'' approved December 23, 2004 (EIS), which is available for public review at the Las Vegas Field Office. The parcel was analyzed in an EA for this sale, which tiers to the EIS.

Certain minerals for this parcel will be reserved to the United States in accordance with BLM approved Mineral Potential Report, dated October 5, 2006. Information pertaining to the reservation of minerals specific to the parcel is located in the case file and available for review at the Las Vegas Field Office.

Terms and Conditions of Sale: The patent issued would contain the following numbered reservations, covenants, terms and conditions:

1. All oil and gas and saleable minerals are reserved to the United States, its permittees, licensees and lessees, together with the right to prospect for, mine, and remove the minerals under applicable law and such regulations as the Secretary of the Interior may prescribe, along with all necessary access and exit;

2. A right-of-way is reserved for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945);

3. The parcel is subject to valid existing rights;

4. Those rights for fiber optic line purposes which have been granted to Nevada Power Co., its successors and assigns, by right-of-way No. N–76304, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761);

5. Those rights for substation, transmission line and access road purposes which have been granted to Nevada Power Co., its successors and assigns, by right-of-way No. N–76305, pursuant to the Act of February 15, 1901 (43 U.S.C. 959);

6. Those rights for road, utility and drainage purposes which have been granted to the City of North Las Vegas, its successors and assigns, by right-of-way No. N–76357, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761);

7. Those rights for underground water pipeline purposes which have been granted to Southern Nevada Water

Authority, its successors and assigns, by right-of-way No. N–66225, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761);

8. Those rights for underground telephone facilities purposes which have been granted to Central Telephone Company, its successors and assigns, by right-of-way No. N–77675, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761);

9. By accepting this patent, the patentee agrees to indemnify, defend and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentee, its employees, agents, contractors, or lessees, or any third-party, arising out of, or in connection with, the patentees use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentee, its employees, agents, contractors, or lessees, or third party arising out of or in connection with the use and/or occupancy of the patented real property resulting in: (1) Violations of federal, state, and local laws and regulations applicable to the real property; (2) Judgments, claims or demands of any kind assessed against the United States; (3) Costs, expenses, damages of any kind incurred by the United States; (4) Other releases or threatened releases on, into or under land, property and other interests of the United States by solid or hazardous waste(s) and/or hazardous substances(s), as defined by federal or state environmental laws; (5) Other activities by which solid or hazardous substances or wastes, as defined by federal and state environmental laws were generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action, or other actions related in any manner to said solid or hazardous substances or wastes; (6) Or natural resource damages as defined by federal and state law. This covenant shall be construed as running with the patented real property, and may be enforced by the United States in a court of competent jurisdiction; and

10. Pursuant to the requirements established by section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9620(h) (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1988, 100 Stat. 1670, notice is hereby given that the above-described lands have been examined and no evidence was found to indicate that any hazardous substances have been stored for one year or more, nor had any hazardous substances been disposed of or released on the subject property.

The parcel is subject to reservations for road, public utilities and flood control purposes, both existing and proposed, in accordance with the local governing entities' transportation plans. No warranty of any kind, express or implied, is given by the United States as to the title, physical condition, or potential use of the parcel of land proposed for sale, and the conveyance of any such parcel will not be on a contingency basis. It is the buyer's responsibility to be aware of all applicable federal, state and local government policies and regulations that would affect the subject lands. It is also the buyer's responsibility to be aware of existing or prospective uses of nearby properties. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

Federal law requires that conveyees must be: (a) A citizen of the United States 18 years of age or over; (b) a corporation subject to the laws of any State or of the United States; (c) a State, State instrumentality or political subdivision authorized to hold property; and (d) an entity legally capable of conveying and holding lands or interests therein under the laws of the State within which the lands to be conveyed are located. Where applicable, the entity shall also meet the requirements of paragraphs (a) and (b) of this section.

On publication of this notice and until completion of the sale, the BLM is no longer accepting land use applications affecting the parcel identified, except applications for the amendment of previously filed right-of-way applications or existing authorizations to increase the term of the grants in accordance with 43 CFR 2807.15 and 2886.15. Encumbrances that may appear in the BLM files for the parcel proposed for sale are available for review during business hours, 7:30 a.m. to 4:30 p.m., Pacific Time, Monday through Friday, at the Las Vegas Field Office.

Proof of citizenship is evidenced by presenting a birth certificate, passport, or naturalization papers. Failure to submit the above requested documents within 30 days from the proposed sale offer shall result in the cancellation of the sale.

The parcel may be subject to applications received prior to publication of this notice if processing the application would have no adverse effect on the marketability of title, or the FMV of the parcel. Encumbrances of records, appearing in the BLM public files for the parcel for sale, are available for review during business hours, 7:30 a.m. to 4:30 p.m., Pacific Time, Monday through Friday, at the Las Vegas Field Office. Subject to limitations prescribed by law and regulation, and prior to patent issuance, a holder of any right-of-way within the parcel may be given the opportunity to amend the right-of-way for conversion to a new term, including perpetuity, if applicable, or to an easement.

BLM will notify valid existing right-of-way holders of their ability to convert their compliant rights-of-way to perpetual rights-of-way or easements. Each valid holder will be notified in writing of their rights and then must apply for the conversion of their current authorization.

Unless other satisfactory arrangements are approved in advance by a BLM authorized officer, conveyance of title shall be through the use of escrow. Designation of the escrow agent shall be through mutual agreement between the BLM and the prospective patentee, and costs of escrow shall be borne by the prospective patentee.

Requests for all escrow instructions must be received by the Las Vegas Field Office prior to 30 days before the prospective patentee's scheduled closing date. There are no exceptions.

BLM will not sign any documents related to 1031 Exchange transactions. The timing for completion of the exchange is the prospective patentee's responsibility in accordance with Internal Revenue Services regulations. BLM is not a party to any 1031 Exchange.

In the event of a sale, the unreserved mineral interests will be conveyed simultaneously with the sale of the land. These unreserved mineral interests have been determined to have no known mineral value pursuant to 43 CFR 2720.0–6 and 2720.2(a). Acceptance of the sale offer will constitute an application for conveyance of those unreserved mineral interests. The purchaser will be required to pay a $50 non-refundable filing fee for conveyance of the available mineral interests. In accordance with BLM's authority to conduct direct sales, BLM is borrowing some of the competitive bid procedures as set forth below. The purchaser will have until 4 p.m., Pacific Time, 30 days from the date of receiving the sale offer to accept the offer and submit a deposit of 20 percent of the purchase price, the $50 filing fee for

conveyance of mineral interests, and payment of publication costs to the Las Vegas Field Office. The purchaser must remit the remainder of the purchase price within 180 days from the date of receiving the sale offer to the Las Vegas Field Office. Payments must be received by certified check, postal money order, bank draft, or cashier's check payable to the U.S. Department of the Interior-BLM. Failure to meet conditions established for this sale will void the sale and any monies received will be forfeited. Arrangements for electronic fund transfer to BLM for the balance due shall be made a minimum of two weeks prior to the date you wish to make payment.

The BLM may accept or reject any or all offers to purchase any parcel, or may withdraw any parcel of land or interest therein from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA or other applicable laws or is determined not to be in the public interest.

The parcel of land will not be offered for sale prior to 60 days from the date of publication of this notice. Only written comments submitted by postal service or overnight mail will be considered as properly filed. Electronic mail, facsimile, or telephone comments will not be considered.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Any adverse comments regarding the proposed sale will be reviewed by the BLM Nevada State Director, who may sustain, vacate, or modify this realty action and issue a final determination. In the absence of timely filed objections, this realty action will become the final determination of the Department of the Interior.

Authority: 43 CFR part 2711.

Dated: July 14, 2008.

Mary Jo Rugwell,

Manager, Las Vegas Field Office.

[FR Doc. E8–17615 Filed 7–31–08; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

[Docket No. MMS–2008–MRM–0029]

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010–0103).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. We changed the title of this information collection request (ICR) to meet OMB requirements. The new title of this ICR is ''30 CFR Parts 202, 206, and 207, Indian Oil and Gas Valuation.''

DATES: Submit written comments on or before *September 2, 2008.*

ADDRESSES: You may submit comments by the following methods:

- Electronically go to *http://www.regulations.gov.* In the ''Comment or Submission'' column, enter ''MMS–2008–MRM–0029'' to view supporting and related materials for this ICR. Click on ''Send a comment or submission'' link to submit public comments. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link. All comments submitted will be posted to the docket.
- Mail comments to Hyla Hurst, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225. Please reference ICR 1010–0103 in your comments.
- Hand-carry comments or use an overnight courier service. Our courier address is Building 85, Room A–614, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225. Please reference ICR 1010–0103 in your comments.

FOR FURTHER INFORMATION CONTACT: Hyla Hurst, telephone (303) 231–3495, or e-mail *Hyla.Hurst@mms.gov.* You may also contact Hyla Hurst to obtain copies, at no cost, of (1) The ICR, (2) any associated forms, and (3) the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Parts 202, 206, and 207, Indian Oil and Gas Valuation.

OMB Control Number: 1010–0103.

Bureau Form Number: Forms MMS–4109, MMS–4110, MMS–4295, MMS–4410, and MMS–4411.

Abstract: The Secretary of the U.S. Department of the Interior (Secretary) is responsible for matters relevant to mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). Under the Mineral Leasing Act (30 U.S.C. 1923), the Indian Mineral Development Act of 1982 (25 U.S.C. 2103), and the Outer Continental Shelf Lands Act (43 U.S.C. 1353), the Secretary is responsible for (1) Managing the production of minerals from Federal and Indian lands and the OCS; (2) collecting royalties and other mineral revenues from lessees who produce minerals; and (3) distributing the funds collected in accordance with applicable laws. The Secretary also has a trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. The MMS performs the minerals revenue management functions and assists the Secretary in carrying out the Department's trust responsibility for Indian lands. Applicable laws pertaining to mineral royalties are located on our Web site at *http://www.mrm.mms.gov/Laws_R_D/PublicLawsAMR.htm.*

Regulations at 30 CFR part 202, subparts C and J, pertain to royalties; part 206, subparts B and E, govern the valuation of oil and gas produced from leases on Indian lands; and part 207 pertains to recordkeeping. Indian tribes and individual Indian mineral owners receive all royalties generated from their lands. Determining product valuation is essential to ensure that Indian tribes and individual Indian mineral owners receive payment on the full value of the minerals removed from their lands. Failure to collect the data described in this information collection could result in the undervaluation of leased minerals on Indian lands. All data reported is subject to subsequent audit and adjustment.

Indian Oil

The regulations apply to all oil production from Indian oil and gas leases, except leases on the Osage Indian Reservation. The regulations provide that lessees determine the value of oil based on the higher of: (1) The gross proceeds under an arm's-length contract, or (2) major portion analysis. These oil valuation methods are eligible for applicable transportation allowances. From information collected

on Form MMS–4110, Oil Transportation Allowance Report, MMS verifies transportation allowances during the product valuation verification to determine if the lessee reported and paid the proper royalty amount. The MMS and tribal personnel evaluate whether the transportation allowances reported and claimed by lessees are within regulatory allowance limitations.

Indian Gas

The regulations apply to all gas production from Indian oil and gas leases, except leases on the Osage Indian Reservation. Most Indian leases contain the requirement to perform accounting for comparison (dual accounting) for gas produced from the lease. Lessees must elect to perform actual dual accounting as defined in 30 CFR 206.176 or alternative dual accounting as defined in 30 CFR 206.173. Lessees use Form MMS–4410, Accounting for Comparison [Dual Accounting], to certify that dual accounting is not required on an Indian lease or to make an election for actual or alternative dual accounting for Indian leases.

The regulations require lessees to submit Form MMS–4411, Safety Net Report, when gas production from an Indian oil or gas lease is sold beyond the first index pricing point. The safety net calculation establishes the minimum value, for royalty purposes, of natural gas production from Indian oil and gas leases. This reporting requirement ensures that Indian lessors receive all royalties due and aids MMS compliance efforts.

The MMS and tribal personnel use the information collected on Form MMS–4295, Gas Transportation Allowance Report, to evaluate whether transportation allowances reported under a non-arm's-length contract or no contract are reasonable, and actual costs are within regulatory allowance limitations.

The MMS and tribal personnel use the information collected on Form MMS–4109, Gas Processing Allowance Summary Report, to evaluate whether processing allowances reported under a non-arm's-length contract or no contract are reasonable, and actual costs are within regulatory allowance limitations.

Indian Oil and Gas

Form MMS–4393, Request to Exceed Regulatory Allowance Limitation, is used for both Federal and Indian leases. Most of the burden hours are incurred on Federal leases; therefore, the form is approved under ICR 1010–0136, pertaining to Federal oil and gas leases. However, we include a discussion of the form in this ICR, as well as the burden hours for Indian leases. To request permission to exceed a regulatory allowance limit, lessees must submit a letter to MMS explaining why a higher allowance limit is necessary and provide supporting documentation, including a completed Form MMS–4393. This form provides MMS with the data necessary to make a decision whether to approve or deny the request and track deductions on royalty reports.

Summary

The MMS is requesting OMB's approval to continue to collect this information. Not collecting this information would limit the Secretary's ability to discharge his/her duties and may also result in loss of royalty payments to Indian tribes and individual Indian mineral owners. Proprietary information submitted to MMS under this collection is protected, and no items of a sensitive nature are collected. The requirement to respond is mandatory for Form MMS–4411, Safety Net Report, when certain circumstances exist. For all other forms in this collection, the requirement to respond is voluntary; i.e., a response is required to obtain a benefit.

Frequency of Response: Annually and on occasion.

Estimated Number and Description of Respondents: 302 Indian lessees.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 1,074 hours.

We have not included in our estimates certain requirements performed in the normal course of business and considered usual and customary. The following chart shows the estimated burden hours by CFR section and paragraph:

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS

30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
	202—ROYALTIES			
	Subpart C—Federal and Indian Oil			
202.101	**Standards for reporting and paying royalties.** Oil volumes are to be reported in barrels of clean oil of 42 standard U.S. gallons (231 cubic inches each) at 60 °F. * * *	Burden covered under OMB Control Number 1010–0140 (expires 11/30/2009). Burden covered under § 210.52.		
	Subpart J—Gas Production From Indian Leases			
202.551(b)	**How do I determine the volume of production for which I must pay royalty if my lease is not in an approved Federal unit or communitization agreement (AFA)?** (b) You and all other persons paying royalties on the lease must report and pay royalties based on your takes. * * *	Burden covered under OMB Control Number 1010–0140. Burden covered under § 210.52.		
202.551(c)	(c) You and all other persons paying royalties on the lease may ask MMS for permission * * *	1	1	1
202.558(a) and (b)	**What standards do I use to report and pay royalties on gas?** (a) You must report gas volumes as follows: * * * (b) You must report residue gas and gas plant product volumes as follows: * * *	Burden covered under OMB Control Number 1010–0140. Burden covered under § 210.52.		

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
	206—PRODUCT VALUATION **Subpart B—Indian Oil**			
206.56(b)(2)	**Transportation allowances—general.** (b)(2) Upon request of a lessee, MMS may approve a transportation allowance deduction in excess of the limitation prescribed by paragraph (b)(1) of this section. * * * An application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) must contain all relevant and supporting documentation necessary for MMS to make a determination. * * *	Burden covered under OMB Control Number 1010–0136 (expires 06/30/2009).		
206.57(a)(1)(i)	**Determination of transportation allowances.** (a) *Arm's-length transportation contracts.* (1)(i) * * * The lessee shall have the burden of demonstrating that its contract is arm's-length.	AUDIT PROCESS. See note.		
206.57(a)(1)(i)	(a) *Arm's-length transportation contracts.* (1)(i) * * * Before any deduction may be taken, the lessee must submit a completed page one of Form MMS–4110 (and Schedule 1), Oil Transportation Allowance Report * * *	Burden covered under § 206.57(c)(1)(i) and (iii).		
206.57(a)(1)(iii)	(a) *Arm's-length transportation contracts.* (1)(iii) * * * When MMS determines that the value of the transportation may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's transportation costs.	AUDIT PROCESS. See note.		
206.57(a)(2)(i)	(a) *Arm's-length transportation contracts.* (2)(i) * * * Except as provided in this paragraph, no allowance may be taken for the costs of transporting lease production which is not royalty-bearing without MMS approval.	Burden covered under § 206.57(a)(3).		
206.57(a)(2)(ii)	(a) *Arm's-length transportation contracts.* (2)(ii) Notwithstanding the requirements of paragraph (i), the lessee may propose to MMS a cost allocation method on the basis of the values of the products transported. * * *	20	1	20
206.57(a)(3)	(a) *Arm's-length transportation contracts.* (3) If an arm's-length transportation contract includes both gaseous and liquid products, and the transportation costs attributable to each product cannot be determined from the contract, the lessee shall propose an allocation procedure to MMS. * * * The lessee shall submit all available data to support its proposal. * * *	40	1	40
206.57(b)(1)	(b) *Non-arm's-length or no contract.* (1) * * * A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4110 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee. * * *	Burden covered under § 206.57(c)(2)(i), and (c)(2)(iii).		
206.57(b)(1)	(b) *Non-arm's-length or no contract.* (1) * * * When necessary or appropriate, MMS may direct a lessee to modify its actual transportation allowance deduction.	Burden covered under OMB Control Number 1010–0140. Burden covered under § 210.52.		
206.57(b)(2)(iv)	(b) *Non-arm's-length or no contract.* (2)(iv) * * * After a lessee has elected to use either method for a transportation system, the lessee may not later elect to change to the other alternative without approval of MMS.	20	1	20
206.57(b)(2)(iv)(A)	(b) *Non-arm's-length or no contract.* (2)(iv)(A) * * * After an election is made, the lessee may not change methods without MMS approval. * * *	20	1	20

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
206.57(b)(3)(i)	(b) *Non-arm's-length or no contract.* (3)(i) * * * Except as provided in this paragraph, the lessee may not take an allowance for transporting lease production which is not royalty bearing without MMS approval.	40	1	40
206.57(b)(3)(ii)	(b) *Non-arm's-length or no contract.* (3)(ii) Notwithstanding the requirements of paragraph (i), the lessee may propose to MMS a cost allocation method on the basis of the values of the products transported. * * *	20	1	20
206.57(b)(4)	(b) *Non-arm's-length or no contract.* (4) Where both gaseous and liquid products are transported through the same transportation system, the lessee shall propose a cost allocation procedure to MMS. * * * The lessee shall submit all available data to support its proposal. * * *	20	1	20
206.57(b)(5)	(b) *Non-arm's-length or no contract.* (5) A lessee may apply to MMS for an exception from the requirement that it compute actual costs in accordance with paragraphs (b)(1) through (b)(4) of this section. * * *	20	1	20
206.57(c)(1)(i)	(c) *Reporting requirements.* (1) *Arm's-length contracts.* (i) With the exception of those transportation allowances specified in paragraphs (c)(1)(v) and (c)(1)(vi) of this section, the lessee shall submit page one of the initial Form MMS–4110 (and Schedule 1), Oil Transportation Allowance Report, prior to, or at the same time as, the transportation allowance determined, under an arm's-length contract, is reported on Form MMS–2014, Report of Sales and Royalty Remittance. * * *	4	4	16
206.57(c)(1)(iii)	(c) *Reporting requirements.* (1) *Arm's-length contracts.* (iii) After the initial reporting period and for succeeding reporting periods, lessees must submit page one of Form MMS–4110 (and Schedule 1) within 3 months after the end of the calendar year, or after the applicable contract or rate terminates or is modified or amended, whichever is earlier, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).	4	4	16
206.57(c)(1)(iv)	(c) *Reporting requirements.* (1) *Arm's-length contracts.* (iv) MMS may require that a lessee submit arm's-length transportation contracts, production agreements, operating agreements, and related documents. Documents shall be submitted within a reasonable time, as determined by MMS.	AUDIT PROCESS. See note.		
206.57(c)(2)(i)	(c) *Reporting requirements.* (2) *Non-arm's-length or no contract.* (i) With the exception of those transportation allowances specified in paragraphs (c)(2)(v), (c)(2)(vii) and (c)(2)(viii) of this section, the lessee shall submit an initial Form MMS–4110 prior to, or at the same time as, the transportation allowance determined under a non-arm's-length contract or no-contract situation is reported on Form MMS–2014. * * * The initial report may be based upon estimated costs.	6	1	6

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
206.57(c)(2)(iii)	(c) *Reporting requirements.* (2) *Non-arm's-length or no contract.* (iii) For calendar-year reporting periods succeeding the initial reporting period, the lessee shall submit a completed Form MMS–4110 containing the actual costs for the previous reporting period. If oil transportation is continuing, the lessee shall include on Form MMS–4110 its estimated costs for the next calendar year. * * * MMS must receive the Form MMS–4110 within 3 months after the end of the previous reporting period, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).	6	3	18
206.57(c)(2)(iv)	(c) *Reporting requirements.* (2) *Non-arm's-length or no contract.* (iv) For new transportation facilities or arrangements, the lessee's initial Form MMS–4110 shall include estimates of the allowable oil transportation costs for the applicable period. * * *	Burden covered under § 206.57(c)(2)(i).		
206.57(c)(2)(v)	(c) *Reporting requirements.* (2) *Non-arm's-length or no contract.* (v) * * * only those allowances that have been approved by MMS in writing * * *	Burden covered under § 206.57(c)(2)(i).		
206.57(c)(2)(vi)	(c) *Reporting requirements.* (2) *Non-arm's-length or no contract.* (vi) Upon request by MMS, the lessee shall submit all data used to prepare its Form MMS–4110. The data shall be provided within a reasonable period of time, as determined by MMS.	AUDIT PROCESS. See note.		
206.57(c)(4) and (e)(2)	(c) *Reporting requirements.* (4) Transportation allowances must be reported as a separate line item on Form MMS–2014 * * * (e) *Adjustments.* (2) For lessees transporting production from Indian leases, the lessee must submit a corrected Form MMS–2014 to reflect actual costs * * *	Burden covered under OMB Control Number 1010–0140. Burden covered under § 210.52.		
206.59	**May I ask MMS for valuation guidance?** You may ask MMS for guidance in determining value. You may propose a value method to MMS. Submit all available data related to your proposal and any additional information MMS deems necessary. * * *	20	1	20
206.61(a) and (b)	**What records must I keep and produce?** (a) On request, you must make available sales, volume, and transportation data for production you sold, purchased, or obtained from the field or area. You must make this data available to MMS, Indian representatives, or other authorized persons. (b) You must retain all data relevant to the determination of royalty value. * * *	AUDIT PROCESS. See note.		
	206—PRODUCT VALUATION **Subpart E—Indian Gas**			
206.172(b)(1)(ii)	**How do I value gas produced from leases in an index zone?** (b) *Valuing residue gas and gas before processing.* (1)(ii) Gas production that you certify on Form MMS–4410 * * * is not processed before it flows into a pipeline with an index but which may be processed later * * *	4	25	100

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
206.172(e)(6)(i) and (iii)	(e) *Determining the minimum value for royalty purposes of gas sold beyond the first index pricing point.* (6)(i) You must report the safety net price for each index zone to MMS on Form MMS–4411, Safety Net Report, no later than June 30 following each calendar year; * * * (iii) MMS may order you to amend your safety net price within one year from the date your Form MMS–4411 is due or is filed, whichever is later. * * *	3	10	30
206.172(e)(6)(ii)	(e) *Determining the minimum value for royalty purposes of gas sold beyond the first index pricing point.* (6)(ii) You must pay and report on Form MMS–2014 additional royalties due no later than June 30 following each calendar year * * *	Burden covered under OMB Control Number 1010–0140. Burden covered under § 210.52.		
206.172(f)(1)(ii), (f)(2), and (f)(3).	(f) *Excluding some or all tribal leases from valuation under this section.* (1) An Indian tribe may ask MMS to exclude some or all of its leases from valuation under this section. * * * (ii) If an Indian tribe requests exclusion from an index zone for less than all of its leases, MMS will approve the request only if the excluded leases may be segregated into one or more groups based on separate fields within the reservation. (2) An Indian tribe may ask MMS to terminate exclusion of its leases from valuation under this section. * * * (3) The Indian tribe's request to MMS under either paragraph (f)(1) or (2) of this section must be in the form of a tribal resolution. * * *	40	1	40
206.173(a)(1)	**How do I calculate the alternative methodology for dual accounting?** (a) *Electing a dual accounting method.* (1) * * * You may elect to perform the dual accounting calculation according to either 206.176(a) (called actual dual accounting), or paragraph (b) of this section (called the alternative methodology for dual accounting).	2	19	38
206.173(a)(2)	(a) *Electing a dual accounting method.* (2) You must make a separate election to use the alternative methodology for dual accounting for your Indian leases in each MMS-designated area. * * *	Burden covered under § 206.173(a)(1).		
206.174(a)(4)(ii)	**How do I value gas production when an index-based method cannot be used?** (a) *Situations in which an index-based method cannot be used.* (4)(ii) If the major portion value is higher, you must submit an amended Form MMS–2014 to MMS by the due date specified in the written notice from MMS of the major portion value. * * *	Burden covered under OMB Control Number 1010–0140. Burden covered under § 210.52.		
206.174(b)(1)(i) and (iii); (b)(2); (d)(2).	(b) *Arm's-length contracts.* (1)(i) You have the burden of demonstrating that your contract is arm's-length. * * * (iii) * * * In these circumstances, MMS will notify you and give you an opportunity to provide written information justifying your value. * * * (2) MMS may require you to certify that your arm's-length contract provisions include all of the consideration the buyer pays, either directly or indirectly, for the gas, residue gas, or gas plant product. (d) *Supporting data.* (2) You must make all such data available upon request to the authorized MMS or Indian representatives, to the Office of the Inspector General of the Department, or other authorized persons. * * *	AUDIT PROCESS. See note.		

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
206.174(d)	(d) *Supporting data.* If you determine the value of production under paragraph (c) of this section, you must retain all data relevant to determination of royalty value.	Burden covered under OMB Control Number 1010–0140.		
206.174(f)	(f) *Value guidance.* You may ask MMS for guidance in determining value. You may propose a valuation method to MMS. Submit all available data related to your proposal and any additional information MMS deems necessary. * * *	40	1	40
206.175(d)(4)	**How do I determine quantities and qualities of production for computing royalties?** (d)(4) You may request MMS approval of other methods for determining the quantity of residue gas and gas plant products allocable to each lease. * * *	20	1	20
206.176(b)	**How do I perform accounting for comparison?** (b) If you are required to account for comparison, you may elect to use the alternative dual accounting methodology provided for in § 206.173 instead of the provisions in paragraph (a) of this section.	Burden covered under § 206.173(a)(1).		
206.176(c)	(c) * * * If you do not perform dual accounting, you must certify to MMS that gas flows into such a pipeline before it is processed.	Burden covered under § 206.172(b)(1)(ii).		
	Transportation Allowances			
206.177(c)(2) and (c)(3)	**What general requirements regarding transportation allowances apply to me?** (c)(2) If you ask MMS, MMS may approve a transportation allowance deduction in excess of the limitation in paragraph (c)(1) of this section. * * * (3) Your application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) must contain all relevant and supporting documentation necessary for MMS to make a determination.	4	1	4
206.178(a)(1)(i)	**How do I determine a transportation allowance?** (a) *Determining a transportation allowance under an arm's-length contract.* (1)(i) * * * You are required to submit to MMS a copy of your arm's-length transportation contract(s) and all subsequent amendments to the contract(s) within 2 months of the date MMS receives your report which claims the allowance on the Form MMS–2014.	1	25	25
206.178(a)(1)(iii)	(a) *Determining a transportation allowance under an arm's-length contract.* (1)(iii) If MMS determines that the consideration paid under an arm's-length transportation contract does not reflect the value of the transportation because of misconduct by or between the contracting parties * * * In these circumstances, MMS will notify you and give you an opportunity to provide written information justifying your transportation costs.	AUDIT PROCESS. See note.		
206.178(a)(2)(i) and (ii)	(a) *Determining a transportation allowance under an arm's-length contract.* (2)(i) * * * you cannot take an allowance for the costs of transporting lease production that is not royalty bearing without MMS approval, or without lessor approval on tribal leases. (ii) As an alternative to paragraph (a)(2)(i) of this section, you may propose to MMS a cost allocation method based on the values of the products transported. * * *	20	1	20

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
206.178(a)(3)(i) and (ii)	(a) *Determining a transportation allowance under an arm's-length contract.* (3)(i) If your arm's-length transportation contract includes both gaseous and liquid products and the transportation costs attributable to each cannot be determined from the contract, you must propose an allocation procedure to MMS. * * * (ii) You are required to submit all relevant data to support your allocation proposal. * * *	40	1	40
206.178(b)(1)(ii)	(b) *Determining a transportation allowance under a non-arm's-length contract or no contract.* (1)(ii) * * * You must submit the actual cost information to support the allowance to MMS on Form MMS–4295, Gas Transportation Allowance Report, within 3 months after the end of the 12-month period to which the allowance applies. * * *	15	3	45
206.178(b)(2)(iv)	(b) *Determining a transportation allowance under a non-arm's-length contract or no contract.* (2)(iv) You may use either depreciation with a return on undepreciated capital investment or a return on depreciable capital investment. * * * you may not later elect to change to the other alternative without MMS approval.	20	1	20
206.178(b)(2)(iv)(A)	(b) *Determining a transportation allowance under a non-arm's-length contract or no contract.* (2)(iv)(A) * * * Once you make an election, you may not change methods without MMS approval. * * *	20	1	20
206.178(b)(3)(i)	(b) *Determining a transportation allowance under a non-arm's-length contract or no contract.* (3)(i) * * * Except as provided in this paragraph, you may not take an allowance for transporting a product that is not royalty bearing without MMS approval.	40	1	40
206.178(b)(3)(ii)	(b) *Determining a transportation allowance under a non-arm's-length contract or no contract.* (3)(ii) As an alternative to the requirements of paragraph (b)(3)(i) of this section, you may propose to MMS a cost allocation method based on the values of the products transported. * * *	20	1	20
206.178(b)(5)	(b) *Determining a transportation allowance under a non-arm's-length contract or no contract.* (5) If you transport both gaseous and liquid products through the same transportation system, you must propose a cost allocation procedure to MMS. * * * You are required to submit all relevant data to support your proposal. * * *	40	1	40
206.178(d)(1)	(d) *Reporting your transportation allowance.* (1) If MMS requests, you must submit all data used to determine your transportation allowance * * *	AUDIT PROCESS. See note.		
206.178(d)(2), (e), and (f)(1)	(d) *Reporting your transportation allowance.* (2) You must report transportation allowances as a separate entry on Form MMS–2014. * * * (e) *Adjusting incorrect allowances.* If for any month the transportation allowance you are entitled to is less than the amount you took on Form MMS–2014, you are required to report and pay additional royalties due, plus interest computed under 30 CFR 218.54 from the first day of the first month you deducted the improper transportation allowance until the date you pay the royalties due. * * * (f) *Determining allowable costs for transportation allowances.* * * * (1) *Firm demand charges paid to pipelines.* * * * You must modify the Form MMS–2014 by the amount received or credited for the affected reporting period.	Burden covered under OMB Control Number 1010–0140. Burden covered under § 210.52.		

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
	Processing Allowances			
206.180(a)(1)(i)	**How do I determine an actual processing allowance?** (a) *Determining a processing allowance if you have an arm's-length processing contract.* (1)(i) * * * You have the burden of demonstrating that your contract is arm's-length. You are required to submit to MMS a copy of your arm's-length contract(s) and all subsequent amendments to the contract(s) within 2 months of the date MMS receives your first report that deducts the allowance on the Form MMS–2014.	1	15	15
206.180(a)(1)(iii)	(a) *Determining a processing allowance if you have an arm's-length processing contract.* (1)(iii) If MMS determines that the consideration paid under an arm's-length processing contract does not reflect the value of the processing because of misconduct by or between the contracting parties * * * In these circumstances, MMS will notify you and give you an opportunity to provide written information justifying your processing costs.	AUDIT PROCESS. See note.		
206.180(a)(3)	(a) *Determining a processing allowance if you have an arm's-length processing contract.* (3) If your arm's-length processing contract includes more than one gas plant product and the processing costs attributable to each product cannot be determined from the contract, you must propose an allocation procedure to MMS. * * * You are required to submit all relevant data to support your proposal. * * *	40	1	40
206.180(b)(1)(ii)	(b) *Determining a processing allowance if you have a non-arm's-length contract or no contract.* (1)(ii) * * * You must submit the actual cost information to support the allowance to MMS on Form MMS–4109, Gas Processing Allowance Summary Report, within 3 months after the end of the 12-month period for which the allowance applies. * * *	20	5	100
206.180(b)(2)(iv)	(b) *Determining a processing allowance if you have a non-arm's-length contract or no contract.* (2)(iv) You may use either depreciation with a return on undepreciable capital investment or a return on depreciable capital investment.* * * you may not later elect to change to the other alternative without MMS approval.	20	1	20
206.180(b)(2)(iv)(A)	(b) *Determining a processing allowance if you have a non-arm's-length contract or no contract.* (2)(iv)(A) * * * Once you make an election, you may not change methods without MMS approval. * * *	20	1	20
206.180(b)(3)	(b) *Determining a processing allowance if you have a non-arm's-length contract or no contract.* (3) Your processing allowance under this paragraph (b) must be determined based upon a calendar year or other period if you and MMS agree to an alternative.	20	1	20
206.180(c)(1)	(c) *Reporting your processing allowance.* (1) If MMS requests, you must submit all data used to determine your processing allowance. * * *	AUDIT PROCESS. See note.		

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
206.180(c)(2) and (d)	(c) *Reporting your processing allowance.* (2) You must report gas processing allowances as a separate entry on the Form MMS–2014. * * * (d) *Adjusting incorrect processing allowances.* If for any month the gas processing allowance you are entitled to is less than the amount you took on Form MMS–2014, you are required to pay additional royalties, plus interest computed under 30 CFR 218.54 from the first day of the first month you deducted a processing allowance until the date you pay the royalties due. * * *	Burden covered under OMB Control Number 1010–0140. Burden covered under § 210.52.		
206.181(c)	**How do I establish processing costs for dual accounting purposes when I do not process the gas?** (c) A proposed comparable processing fee submitted to either the tribe and MMS (for tribal leases) or MMS (for allotted leases) with your supporting documentation submitted to MMS. If MMS does not take action on your proposal within 120 days, the proposal will be deemed to be denied and subject to appeal to the MMS Director under 30 CFR part 290.	40	1	40
207—SALES AGREEMENTS OR CONTRACTS GOVERNING THE DISPOSAL OF LEASE PRODUCTS **Subpart A—General Provisions**				
207.4(b)	**Contracts made pursuant to old form leases.** (b) The stipulation, the substance of which must be included in the contract, or be made the subject matter of a separate instrument properly identifying the leases affected thereby, is as follows: * * *	AUDIT PROCESS. See note.		
207.5	**Contract and sales agreement retention.** Copies of all sales contracts, posted price bulletins, etc., and copies of all agreements, other contracts, or other documents which are relevant to the valuation of production are to be maintained by the lessee and made available upon request during normal working hours to authorized MMS, State or Indian representatives, other MMS or BLM officials, auditors of the General Accounting Office, or other persons authorized to receive such documents, or shall be submitted to MMS within a reasonable period of time, as determined by MMS. Any oral sales arrangement negotiated by the lessee must be placed in written form and retained by the lessee. Records shall be retained in accordance with 30 CFR part 212.	AUDIT PROCESS. See note.		
Total Burden			140	1,074

Note: AUDIT PROCESS—The Office of Regulatory Affairs determined that the audit process is exempt from the Paperwork Reduction Act of 1995 because MMS staff asks non-standard questions to resolve exceptions.

Estimated Annual Reporting and Recordkeeping ''Non-hour'' Cost Burden: We have identified no ''non-hour'' cost burdens.

Public Disclosure Statement: The PRA (44 U.S.C. 3501 *et seq.*) provides that 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.

Comments: Before submitting an ICR to OMB, PRA Section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting ''non-hour cost'' burden to respondents or recordkeepers resulting from the collection of information. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs.

Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request. The ICR also will be posted at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm*.

Public Comment Policy: We will post all comments in response to this notice at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm*. We also will make copies of the comments available for public view, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public view your personal identifying information, we cannot guarantee that we will be able to do so.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208–7744.

Dated: July 21, 2008.

Richard J. Adamski,

Acting Associate Director for Minerals Revenue Management.

[FR Doc. E8–17730 Filed 7–31–08; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Request for Comments on the Preparation of a 5-Year Outer Continental Shelf (OCS) Oil and Gas Leasing Program

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Request for Comments.

SUMMARY: Section 18 of the OCS Lands Act (43 U.S.C. 1344) requires the Department of the Interior to solicit information from interested and affected parties during the preparation of a 5-year OCS oil and gas leasing program. The current 5-year program covers the period July 2007 to June 30, 2012. The Department's MMS is soliciting information on whether to begin a new Program for mid-2010 to mid-2015 (approximate dates) to succeed the current one.

Section 18 requires completion of a multi-step process of public consultation and analysis before the Secretary of the Interior may approve a new 5-Year Program. The section 18 process includes the following required steps: This initial solicitation of comments; development of a draft proposed program, a proposed program, a proposed final program; and Secretarial approval. If the decision is made to prepare a new 5-Year Program, the MMS will also prepare appropriate NEPA analysis documents. The public will have opportunities to comment on the draft proposed program, the draft EIS or other NEPA documents, and the proposed program. This Notice in particular requests comments on areas that are restricted from leasing by Congressional Moratoria but were removed from Presidential Withdrawal on July 14, 2008.

DATES: The MMS must receive all comments and information by September 15, 2008.

Public Comment Procedure

The MMS will accept comments in one of two formats: By mail or our Internet commenting system. Please submit your comments using only one of these formats, and include full names and addresses. Comments submitted by other means may not be considered. We will not consider anonymous comments, and we will make available for inspection in their entirety all comments submitted by organizations and businesses, or by individuals identifying themselves as representatives of organizations and businesses.

Our practice is to make comments, including the names and home addresses of respondents, available for public review. An individual commenter may ask that we withhold from the public record, his or her name, home address, or both, and we will honor such a request to the extent allowable by law. If you submit comments and desire that we withhold such information, you must so state prominently at the beginning of your submission.

ADDRESSES: Mail comments and information on the program to: Ms. Renee Orr, 5-Year Program Manager, Minerals Management Service (MS–4010), 381 Elden Street, Herndon, Virginia 20170. Environmental comments and information relevant to oil and gas development on the OCS should be sent to: Mr. James F. Bennett, Chief, Branch of Environmental Assessment, Minerals Management Service (MS–4042), 381 Elden Street, Herndon, Virginia 20170. If you submit any privileged or proprietary information to be treated as confidential, please mark the envelope, ''Contains Confidential Information''.

Internet: The MMS will accept comments submitted to our electronic public comment system. (Public Connect). This system can be accessed at *http://www.mms.gov*. We also will provide access to information concerning the 5-Year Program at the MMS Internet Web site (*http://www.mms.gov*) and copies or summaries of comments we receive in response to this notice will be available in the MMS Public Connect database.

FOR FURTHER INFORMATION CONTACT: Ms. Renee Orr, 5-Year Program Manager, at (703) 787–1215.

SUPPLEMENTARY INFORMATION: The MMS requests comments from states; local and tribal governments; American Indian and Native Alaskan organizations; Federal agencies; environmental and fish and wildlife organizations; the oil and gas industry; other interested organizations; and other parties on whether to begin the preparation of a new 5-Year Program. MMS is seeking a wide range of information, including marine productivity, environmental sensitivity and resource assessment. The 5-Year Program enables the Federal Government, states, industry, and other interested parties to plan for steps proposed to lead to OCS oil and gas lease sales. The Department will make a decision on whether to proceed with a specific lease sale on the schedule, only after meeting all of the applicable requirements of the OCS Lands Act, the National Environmental Policy Act (NEPA), and other statutes.

The OCS is a significant source of oil and gas for the Nation's energy supply. On a per day basis, the OCS currently produces about 1.35 million barrels of oil and almost 8 billion cubic feet of natural gas. This represents approximately 27 percent of domestic oil production and 15 percent of natural gas production.

The MMS's oversight and regulatory frameworks ensure production and

drilling are conducted in a safe and environmentally responsible manner.

The offshore areas of the United States are estimated to contain significant quantities of resources in yet-to-be-discovered fields. MMS estimates that the Undiscovered Technically Recoverable oil and gas resources in the U.S. OCS consist of 86 billion barrels of oil and 420 trillion cubic feet of natural gas. Significant areas of the OCS have been under congressional and/or executive restrictions starting in the early 1980's. Currently, approximately 574 million acres, i.e., 85 percent of the OCS offshore the lower-48 states are unavailable for leasing consideration, due to congressional moratoria, something no other country in the world has done to this extent. MMS estimates that these restricted areas—in the Pacific, the Atlantic, and parts of the central and eastern Gulf of Mexico—contain about 30 percent of the potential undiscovered oil and 27 percent of the undiscovered natural gas resources offshore the lower-48 states. (This is a mean estimate based on MMS's 2006 assessment.)

Neighboring countries are expanding offshore oil and gas exploration due to oil and gas price increases as well as other environmental and economic factors. A moratorium imposed by the Canadian government on offshore drilling in Georges Bank, a rich fishing ground off southwest Nova Scotia in the North Atlantic, is in place until 2012. The Canadian government is considering lifting that moratorium. Canada also has issued leases and exploration rights in the eastern Beaufort Sea adjacent to the U.S. Beaufort Sea. Another example is Cuba, which has entered into licenses with private energy companies to develop its offshore resources. Cuba appears to be exploring aggressively its oil and gas resources since the late 1990's, with offshore activity less than 50 miles from the coast of Florida.

The vast majority of OCS production comes from the Central and Western Planning Areas of the Gulf of Mexico. Given the recent effects of hurricanes on Gulf production in the short and long terms, it is clear that the country has concentrated most of its offshore domestic energy production activity in one area. To address this, MMS is calling for a broadened approach to address other areas of the OCS as well. In testimony before Congress in May 2008, Energy Secretary Bodman emphasized the need to expand conventional energy supplies and diversify their sources. He proposed greater access to areas, including the OCS, that contain substantial amounts of oil and natural gas. New development technologies and methods will provide the opportunity for this development to proceed with proper protection for the environment.

The MMS is initiating the section 18 5-year program development at this time, approximately 2 years ahead of schedule, as part of the Federal Government's actions to address the existing domestic energy situation. Currently, each American uses an average of 3 gallons of oil per day. About two-thirds of that oil is used in transportation. In fact, oil is expected to remain, by far, the primary fuel for transportation for decades to come, even with aggressive efforts and government policies to encourage the development of alternative fuels, more efficient engines, and increasingly effective conservation measures.

The MMS is developing a program to produce electricity from alternative energy resources on the OCS. Under the Energy Policy Act of 2005, the Secretary, acting through MMS, has established a program to develop renewable energy resources on the OCS. On July 9, 2008, MMS issued a Proposed Rule for alternative energy on the OCS. As a first step, under an interim policy announced in late 2007, MMS is working toward issuance of several leases for data gathering and technology testing. These leases will look at varied renewable energy sources in different portions of the OCS. The Energy Information Administration (EIA) reported in 2007 that wind and other renewables are the fastest growing energy sources in the U.S., projecting that renewables will account for over 10 percent of domestic energy production by 2030. In the long term, development of a wide array of renewable energy sources is critical. However, in the short and mid-term, both nationally and globally, we will continue to rely on fossil fuels.

On June 18, 2008, the President issued a statement on energy, particularly focusing on the rising price of gasoline. High gasoline prices stem from high oil prices which result from basic ''supply and demand'' factors in the current market. The dramatic increase in oil and natural gas prices has resulted from growing U.S. and global demand for these products that has not been matched by an equivalent increase in available supplies. The President stated that much of the oil consumed in the U.S. comes from abroad and some of that is from ''unstable regions and unfriendly regimes. This makes us more vulnerable to supply shocks and price spikes beyond our control—and that puts both our economy and our security at risk.'' The Department of Commerce reported in April that the U.S. trade deficit grew to its largest level in over a year to $60.9 billion. Even with exports rising, increases in oil prices continued to drive up the deficit. The deficit of petroleum products has grown to $34.5 billion, up from $23.5 billion last year. It is expected that continued importing of oil will widen the trade deficit even more sending billions of dollars to other countries.

Gasoline prices may be a more visible consequence of the energy situation, but there are other consequences that affect various sectors of the economy. According to the EIA, while gasoline prices in the U.S. have increased about $1.15 per gallon over the past year, diesel fuel has increased almost $1.90 per gallon. (Source: Gasoline and Diesel Fuel Update. *Energy Information Administration*. 14 July 2008. *http://tonto.eia.doe.gov/oog/info/wohdp/diesel.asp?featureclicked=1&*) Since much of the Nation's consumer goods are transported by truck, the prices of such goods to the consumer also reflect the increase in energy costs and may affect consumer buying patterns.

Energy is also one of the greatest input costs for manufacturers. This sector is dependent upon globally competitive energy to compete in the marketplace both domestically and globally. According to the Industrial Energy Consumers of America (IECA), a cross-industry trade association, the high price of natural gas in particular has contributed to the loss of about 3.3 million, or about 19 percent, of U.S. manufacturing jobs since 2000 (Source: Cicio, Paul. Industrial Energy Consumers of America. ''A Natural-Gas High.'' *Forbes.com*. 4 June 2008. *http://www.ieca-us.com/documents/06.04.08_Forbes.comArticle-MagazineArticle.pdf*).

Furthermore, as the use of natural gas to generate electricity has grown in this country, the increase in natural gas prices causes an increase in electricity costs to manufacturers as well as to the general public. The EIA projects residential electricity prices will increase by an annual average of about 5.2 percent in 2008 and 9.8 percent in 2009, compared with an increase of 2.2 percent in 2007. (Source: Short-Term Energy Outlook. *Energy Information Administration*. 8 July 2008. *http://www.eia.doe.gov/steo*) Unlike oil that is priced globally, natural gas is a more regional product that is priced domestically. Over 80 percent of natural gas consumed in the U.S. is domestically produced. While supply and demand have remained fairly stable, the price of natural gas has

shown an increase of almost 130 percent over the past year.

In his June 18 statement, the President asked Congress to pass legislation as soon as possible to lift the congressional restrictions in order to give states the option to recommend the opening of the OCS off their coasts to environmentally-responsible exploration for and development of hydrocarbon resources and sharing of revenues. On July 14, the President removed the executive prohibition in those areas and again asked Congress to lift the congressional restrictions and to allow increased domestic oil exploration and production. Similar legislation has been introduced in the recent past, but not enacted. The current economic and energy situation may argue for reconsideration of these matters. The dramatic increase in energy prices has affected all aspects of the American economy, and while not all coastal states have considered exploration and development activity off their coasts, some states have already addressed the potential of the OCS. For example, in 2006 the Commonwealth of Virginia adopted an energy policy that includes interest in developing natural gas resources more than 50 miles off its coast. Similar legislation has been introduced in other states.

Section 18 of the OCS Lands Act requires that the Secretary consider national energy needs in formulating a leasing program. In April 2007 when MMS announced the Proposed Final Program for 2007–2012, oil was priced at $64.21 per barrel. As of the end of June 2008, prices were at $134.60 per barrel, representing an increase of over 100 percent. Gasoline prices have doubled over the same period from just over $2 to over $4 per gallon.

OCS Planning Areas To Be Considered and Analyzed

Section 18 of the OCS Lands Act requires that the 5-year schedule of lease sales be based upon a comparative analysis of the oil and gas-bearing regions of the OCS. MMS has created 26 planning areas, which are depicted in Figures 1 and 2. The boundaries between planning areas were administratively created and are not specified in law or regulation. Note that precise marine boundaries between the United States and nearby or adjacent nations have not been determined in all cases. The depicted maritime boundaries and limits, as well as divisions between planning areas, where shown, are for planning and administrative purposes only. These limits do not affect or prejudice in any manner the position of the United States, or its individual States, with respect to the nature or extent of internal waters or of sovereign rights or jurisdiction.

Many planning areas were subject to a recently modified presidential withdrawal from leasing under the authority of section 12 of the OCS Lands Act (43 U.S.C. 1341). On July 14, 2008 a Modification of the Presidential Withdrawal of areas of the United States Outer Continental Shelf from leasing disposition was announced by President Bush in the following statement, ''Under the authority vested in me as President of the United States, including section 12(a) of the Outer Continental Shelf Lands Act, 43 U.S.C. 1341(a), I hereby modify the prior memoranda of withdrawals from disposition by leasing of the United States Outer Continental Shelf issued on August 4, 1992, and June 12, 1998, as modified on January 9, 2007, to read only as follows:''

> Under the authority vested in me as President of the United States, including section 12(a) of the Outer Continental Shelf Lands Act, 43 U.S.C. 1341(a), I hereby withdraw from disposition by leasing, for a time period without specific expiration, those areas of the Outer Continental Shelf designated as of July 14, 2008, as Marine Sanctuaries under the Marine Protection, Research, and Sanctuaries Act of 1972, 16 U.S.C. 1431–1434, 33 U.S.C. 1401 *et seq.*

This modification affects the following planning areas: Washington-Oregon; Northern, Central, and Southern California; South, Mid-, and North Atlantic; and Central and Eastern Gulf of Mexico. Portions of these planning areas have been closed to leasing pursuant to congressional moratoria in annual appropriations statutes from the 1980's to the present.

Also pursuant to the Gulf of Mexico Energy Security Act of 2006, Congress placed off limits until 2022 the Eastern Gulf within 125 miles of Florida, all of the Eastern Gulf east of 86 degrees, 41 minutes West longitude, and a portion of the Central Gulf within 100 miles of Florida. See Figure 2. The President's June 16 and July 14 statements continue to recognize that deference should be paid to the coastal states, but calls for discontinuing the restrictions so the states have the option to decide whether to support offshore activity. As with the RFI issued in August 2005 (70 FR 49669) for the current program, we are asking for input from the states, local governments, and other interested parties as to whether and how their interest in offshore resources has changed. Based upon expressions of such interest in the initiation of the current program, areas under restriction were included in the program proposals and the approved program includes three areas that had not been considered for leasing for many years—the North Aleutian Basin, Alaska; a portion of the Gulf of Mexico; and an area in the Mid-Atlantic off the coast of Virginia. Only the area off Virginia remains under a congressional ban. Had these areas not been included in the Draft Proposed Program, they could not have been in the approved program.

As set forth in more detail later in this notice, the information requested is wide-ranging, including other uses of the sea, marine productivity, and environmental sensitivity. Accordingly, this notice provides an opportunity for a governor or anyone else to comment on any area of the OCS. Such information is therefore solicited and will be considered in light of the factors specified by section 18 of the OCS Lands Act, discussed later in this notice, and in light of existing moratoria. Based upon the analysis of these factors, the Secretary will decide which areas to include in the draft proposed program. Pursuant to section 18, included areas will be subject to further analysis as well as review and analysis under NEPA. The Secretary also seeks comments on whether the Congressional restrictions should be eliminated or modified.

Section 18

As previously noted, the program preparation process will follow all the procedural steps required by section 18 of the OCS Lands Act. This notice solicits comments early in the preparation process pursuant to section 18(c)(1) of that Act. The MMS will prepare a draft proposed program based upon consideration of the comments we receive and analysis of the principles and factors specified in section 18. The draft proposed program will present for review and comment a preliminary schedule of lease sales and potential alternatives.

Section 18 of the OCS Lands Act lists the factors to be considered—the economic, social, and environmental values of all of the resources of the OCS and the potential impact of oil and gas exploration and development on the environment. Specific factors that must be analyzed and considered in deciding where and when to lease include the following: (1) Existing information on the geographical, geological, and ecological characteristics of such regions; (2) equitable sharing of developmental benefits and environmental risks among the various regions; (3) location of such regions and regional and national energy markets; (4) location with respect to other current

and anticipated uses of the sea and seabed; (5) expressed industry interest; (6) laws, goals, and policies of affected states specifically identified by governors; (7) relative environmental sensitivity and marine productivity of different areas of the OCS; and (8) environmental and predictive information for different areas of the OCS. The OCS Lands Act requires the Secretary to obtain a proper balance among the potential for environmental damage, the discovery of oil and gas, and adverse impact on the coastal zone, for which DOI uses cost-benefit analysis.

Types of Information Requested

The MMS invites comments from anyone who would like to submit information for us to consider in determining the appropriate size, timing, and location of OCS oil and gas leasing for the new 5-year period. The types of information we seek are described below, using general and specific headings. Regardless of these headings, all respondents are welcome to comment on any aspect of program preparation and to submit any type of pertinent information.

General

The MMS would like to receive comments and suggestions of national or regional application that would be useful in formulating the program. The types of information that would be most useful to us in conducting the analysis pursuant to section 18 of the OCS Lands Act relate to the following factors:

(1) National energy needs for the period relevant to the new program (in particular for this program, the role of OCS oil and gas leasing in achieving national energy policy goals, including its potential for contributing to increased domestic natural gas supplies); the economic, social, and environmental values of the renewable and nonrenewable resources contained in the OCS; and the potential impact of oil and gas exploration and development on other resource values of the OCS and the marine, coastal, and human environments;

(2) Geographical, geological, and ecological characteristics of the planning areas of the OCS and near shore and coastal environments;

(3) Equitable sharing of developmental benefits and environmental risks among the various planning areas;

(4) Location of planning areas with respect to, and the relative needs of, regional and national energy markets;

(5) Other uses of the sea and seabed, including fisheries, navigation, military activities, existing or proposed sea lanes, potential sites of deepwater ports (including liquefied natural gas facilities), potential offshore wind, wave, current or other alternative energy sites, and other anticipated uses of OCS resources and locations;

(6) Relative environmental sensitivity and marine productivity of the different planning areas and/or a specific section of a given planning area of the OCS;

(7) Environmental and predictive information pertaining to offshore and coastal areas potentially affected by OCS oil and gas development (including, but not limited to, socio-cultural and archaeological information); and

(8) Methods and procedures for assuring the receipt of fair market value for lands leased.

The MMS also invites commenters to respond to the following questions:

(i) What do you think is the proper role of OCS oil and gas leasing as part of a comprehensive national energy policy? How should the 5-year program be structured to fulfill this role?

(ii) Since recent studies have projected shortfalls in meeting energy needs, particularly natural gas, how could such needs be balanced with the laws, goals, and policies influencing the management of the OCS? How should long-term planning address the current energy supply situation?

(iii) Should areas under Congressional moratoria be included in the new 5-Year Program? What areas? With Sales proposed in what time-frame?

(iv) Although OCS oil and gas leasing is typically conducted through an extensive, long-established process, are there alternative ways to ensure appropriate consultation and to streamline our leasing procedures? Should the OCS Lands Act be amended to allow changes in the 5-year plan without starting the process all over again in cases of acute supply or demand shift affecting national security? How might we best meet the purpose of the OCS Lands Act ''to insure that the extent of oil and gas resources of the outer Continental Shelf is assessed at the earliest practicable time''?

(v) If new areas are leased for exploration and potential development, what short-term and long-term impacts do you foresee for the economies of coastal communities?

(vi) How should ecological considerations be weighed against national and local economic benefits, if new areas are considered for oil and gas leasing?

(vii) If new areas are not leased for exploration and potential development, what environmental impacts do you foresee from imports of oil and gas?

(viii) Is there a strategic advantage to considering sources of oil and gas in areas currently under congressional moratoria to potentially diversify OCS energy development?

Specific

States

As every state is feeling the effects of increased oil and gas prices and thereby is potentially impacted by the possibilities of enhanced domestic energy production, a letter soliciting such information has been sent to the governors of all 50 states. For coastal states, pursuant to section 18(f)(5) of the OCS Lands Act and implementing regulations at 30 CFR 256.20, MMS requests information concerning the relationship between OCS oil and gas activity and the states' coastal zone management programs that are being developed or administered under the Coastal Zone Management Act. We also request states to submit information concerning environmental risk and potential for damage to coastal and marine resources associated with development of the OCS, information related to other uses of the sea, and any information that is relevant to equitable sharing of developmental benefits and environmental risks associated with OCS oil and gas activity. In addition, for non-coastal and coastal states we request information on the impacts of rising prices and potential shortages on your economies and citizens and their roles in the national economy.

Oil and Gas Industry

As specified in section 18(a)(2)(E) of the OCS Lands Act, MMS requests that oil and gas industry respondents provide information indicating interest in the opportunity to lease and develop additional OCS oil and gas resources. Respondents should base this information upon their expectations as of 2010. For each area in which a company is interested, please submit information concerning unleased hydrocarbon potential, future oil and gas price expectations, and other relevant information that the company uses in making OCS oil and gas leasing decisions. The MMS requests that industry respondents provide additional information as specified below. Upon request, such information will be treated confidentially, as explained further below:

(1) Indicate the OCS planning area(s) where the company would be interested in acquiring oil and gas leases regardless of whether the area is currently under

Congressional moratoria. If more than one planning area is of interest, rank the areas in order of preference.

(2) Indicate the number and timing of lease sales in the period 2010–2015 that would be appropriate for each planning area. If only one lease sale in a planning area is appropriate, indicate whether that area should be considered for leasing early or late in the 5-year program schedule. If more than one lease sale in a planning area is suggested, indicate the preferred interval between lease sales.

(3) The MMS estimated resource potential in moratoria areas is based on a limited number of wells, and very old (25 years) seismic data. How might seismic data be acquired in these areas?

(4) Indicate the lead time to production (should new leasing be allowed to occur in previously restricted areas) in areas that are not part of the current program, relative to lead-times to new production in previously leased areas like the Central and Western Gulf of Mexico.

Section 18(g) of the OCS Lands Act authorizes confidential treatment of privileged or proprietary information. In order to protect the confidentiality of privileged or proprietary information, include such information as an attachment to other comments submitted so that there is no ambiguity about what portions of the comments are confidential or proprietary. Upon request, MMS will treat the privileged or proprietary information that is attached to a response as confidential from the time of its receipt until 5 years after approval of the 2010–2015 leasing program, subject to the standards of the Freedom of Information Act. However, MMS will not treat as confidential any aggregate summaries of privileged or proprietary information, the names of respondents, or comments not containing such information. As noted above, respondents should affix the label ''Contains Confidential Information'' on any envelope containing privileged or proprietary information.

Department of Commerce

Pursuant to section 18(f)(5) of the OCS Lands Act and implementing regulations at 30 CFR 256.20, MMS requests information concerning relationships between affected states' coastal zone management programs and OCS oil and gas activities. We have sent a letter to the Secretary of Commerce soliciting such information.

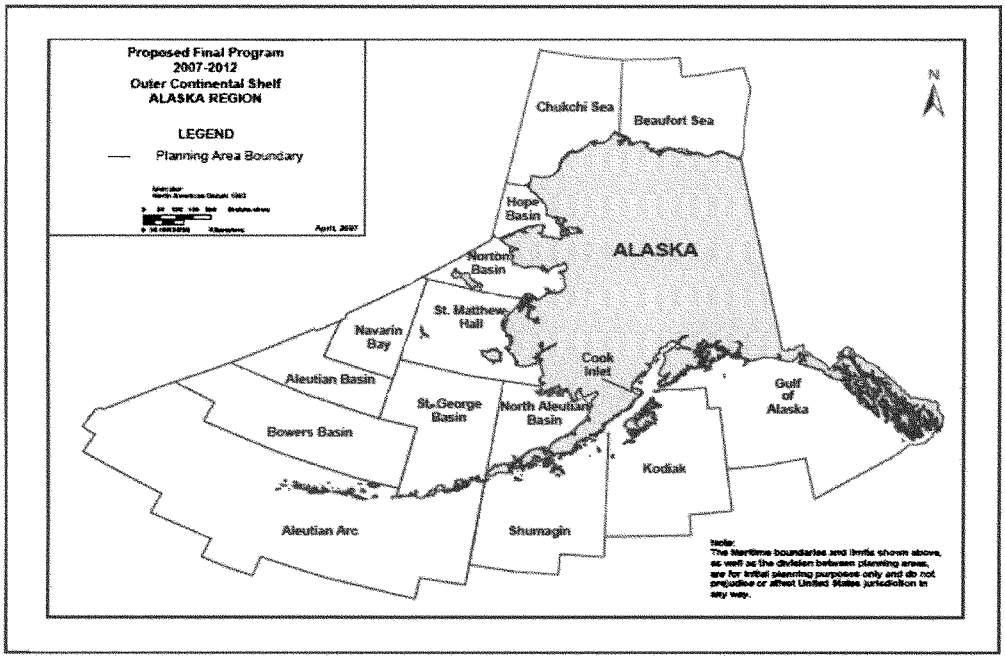
Department of Energy

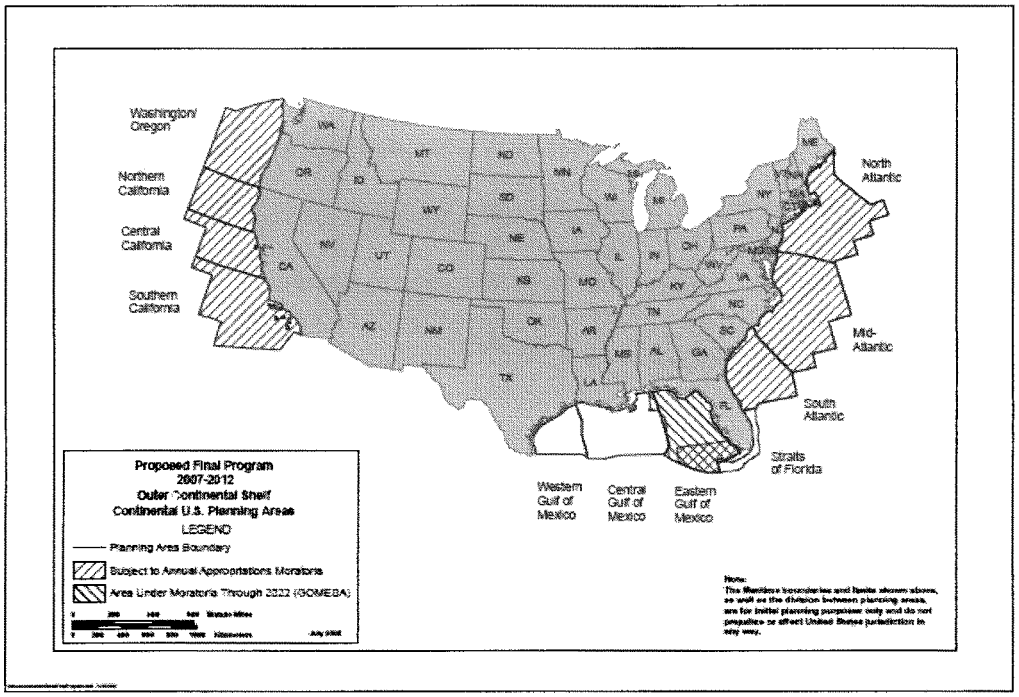
Pursuant to implementing regulations at 30 CFR 256.16, MMS requests information concerning regional and national energy markets, OCS oil and gas production goals, and oil and gas transportation networks. We have sent a letter to the Secretary of Energy soliciting such information.

Dated: July 29, 2008.

Randall B. Luthi,

Director, Minerals Management Service.





[FR Doc. E8–17708 Filed 7–31–08; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Dam Adaptive Management Work Group

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of charter renewal.

SUMMARY: This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act of 1972 (Pub. L. 92–463, as amended). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior (Secretary) is renewing the charter for the Glen Canyon Dam Adaptive Management Work Group. The purpose of the Adaptive Management Work Group is to advise and to provide recommendations to the Secretary with respect to the operation of Glen Canyon Dam and the exercise of other authorities pursuant to applicable Federal law.

FOR FURTHER INFORMATION CONTACT: Linda Whetton, 801–524–3880.

The certification of renewal is published below.

Certification

I hereby certify that Charter renewal of the Glen Canyon Dam Adaptive Management Work Group is in the public interest in connection with the performance of duties imposed on the Department of the Interior.

Dirk Kempthorne,

Secretary of the Interior.

[FR Doc. E8–17587 Filed 7–31–08; 8:45 am]

BILLING CODE 4310–MN–M

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

United States Section; Notice of Availability of a Draft Environmental Assessment and Finding of No Significant Impact for Improvements to the Rio Grande Rectification Project in El Paso and Hudspeth Counties, TX

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico (USIBWC).

ACTION: Notice of Availability of Draft Environmental Assessment (EA) and Finding of No Significant Impact (FONSI).

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, the Council on Environmental Quality Final Regulations (40 CFR Parts 1500 through 1508), and the United States Section's Operational Procedures for Implementing Section 102 of NEPA, published in the **Federal Register** September 2, 1981, (46 FR 44083); the USIBWC hereby gives notice of availability of the Draft Environmental Assessment and FONSI for Improvements to the Rio Grande Rectification Project (RGRP) located in El Paso and Hudspeth Counties, Texas are available. An environmental impact statement will not be prepared unless additional information which may affect this decision is brought to our attention within 30 days from the date of this Notice.

FOR FURTHER INFORMATION CONTACT: Lisa Santana, Environmental Protection Specialist, Environmental Management Division, United States Section, International Boundary and Water Commission; 4171 N. Mesa, C–100; El Paso, Texas 79902. Telephone: (915) 832–4707; e-mail: *lisasantana@ibwc.gov.*

DATES: Comments on the Draft EA and Draft FONSI will be accepted through September 2, 2008

Availability: Single hard copies of the Draft Environmental Assessment and Finding of No Significant Impact are available by request at the above address. Electronic copies are available from the USIBWC homepage at *http://www.ibwc.gov/Organization/Environmental/EIS_EA_Public_Comment.html.*

Dated: July 28, 2008.

Susan Daniel,

General Counsel.

[FR Doc. E8–17514 Filed 7–31–08; 8:45 am]

BILLING CODE 7010–01–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–753, 754, and 756 (Second Review)]

Cut-to-Length Carbon Steel Plate From China, Russia, and Ukraine

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty order on cut-to-length carbon steel plate from China and the suspended investigations on cut-to-length carbon steel plate from Russia and Ukraine.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on cut-to-length carbon steel plate from China and/or the termination of the suspended investigations on cut-to-length carbon steel plate from Russia and Ukraine would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is September 22, 2008. Comments on the adequacy of responses may be filed with the Commission by October 15, 2008. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

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

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server *(http://www.usitc.gov).* The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. On October 24, 1997, the Department of Commerce suspended antidumping duty investigations on imports of cut-to-length carbon steel plate from China, Russia, and Ukraine (62 FR 61766, 61773, and 61780, November 19, 1997). Following five-year reviews by Commerce and the Commission, effective September 17, 2003, Commerce issued a continuation of the suspended investigations on imports of cut-to-length carbon steel plate from China, Russia, and Ukraine (68 FR 54417). The suspension agreement concerning cut-to-length carbon steel plate from China was subsequently terminated and an antidumping duty order was imposed effective November 3, 2003 (68 FR 60081). The Commission is now conducting second reviews to determine whether revocation of the order concerning cut-to-length carbon steel plate from China and/or termination of the suspended investigations concerning cut-to-length carbon steel plate from Russia and Ukraine would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions. The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) *The Subject Countries* in these reviews are China, Russia, and Ukraine.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations, the Commission defined the Domestic Like Product as cut-to-length plate, co-extensive with Commerce's scope, produced by U.S. mills or cut from coiled plate by service centers. In its full five-year review determinations, the Commission defined the Domestic Like Product as cut-to-length plate, including cut-to-length plate made from microalloy steel. One Commissioner defined the Domestic Like Product differently in the first five-year reviews.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations and its full five-year review determinations, the Commission defined the Domestic Industry to include all producers of the Domestic Like Product, whether toll producers, integrated producers, or processors. One Commissioner defined the Domestic Industry differently in the first five-year reviews.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list. Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register** . The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official recently has advised that a five-year review is no longer considered the ''same particular matter'' as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics.

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 08–5-187, expiration date June 30, 2011. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Consequently, former employees are no longer required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification. Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions. Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is September 22, 2008. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is October 15, 2008. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information. Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information to be Provided in Response to this Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and e-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order with respect to China and the termination of the suspended investigations with respect to Russia and Ukraine on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in each Subject Country that currently export or have exported Subject Merchandise to the United States or other countries after 2002.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 2007 (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country(ies), provide the following information on your firm's(s') operations on that product

during calendar year 2007 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from each Subject Country accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of Subject Merchandise imported from each Subject Country; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from each Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country(ies), provide the following information on your firm's(s') operations on that product during calendar year 2007 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in each Subject Country accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from each Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in each Subject Country after 2002, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country(ies), and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: July 21, 2008.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–17179 Filed 7–31–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–567]

In the Matter of Certain Foam Footwear; Notice of Commission Decision To Modify a Final Initial Determination and To Terminate the Investigation With a Finding of No Violation of Section 337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to modify a final initial determination (''ID'') of the presiding administrative law judge (''ALJ''). The Commission has determined that there is no violation of section 337 in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 11, 2006, based on a complaint, as amended, filed by Crocs, Inc. (''Crocs'') of Niwot, Colorado. 71 FR 27514 (2006). The amended complaint alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain foam footwear, by reason of infringement of claims 1–2 of U.S. Patent No. 6,993,858 (''the '858 patent''); U.S. Patent No. D517,789 (''the '789 patent''); and the Crocs trade dress (the image and overall appearance of Crocs-brand footwear). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337. The complaint requests that the Commission issue a permanent general exclusion order and permanent cease and desist orders. The complaint identifies 11 respondents that include: (1) Collective Licensing International, LLC (''Collective'') of Englewood, Colorado; (2) Double Diamond Distribution Ltd. (''Double Diamond'') of Saskatoon, Saskatchewan; (3) Effervescent Inc. (''Effervescent'') of Fitchburg, Massachusetts; (4) Gen-X Sports, Inc. (''Gen-X Sports'') of Toronto, Ontario; (5) Holey Soles Holding Ltd. (''Holey Soles'') of Vancouver, British Columbia; (6) Australia Unlimited, Inc. of Seattle, Washington; (7) Cheng's Enterprises Inc. of Carlstadt, New Jersey; (8) D. Myers & Sons, Inc. of Baltimore, Maryland; (9) Inter-Pacific Trading Corp. of Los Angeles, California; (10) Pali Hawaii of Honolulu, Hawaii; and (11) Shaka Shoes of Kaliua-Kona, Hawaii. The Commission terminated the investigation as to the trade dress allegation on September 11, 2006. A twelfth respondent, Old Dominion Footwear, Inc. of Madison Heights, Virginia, was added to the investigation on October 10, 2006. All but five respondents have been terminated from the investigation on the basis of a

consent order, settlement agreement, or undisputed Commission determination of non-infringement. The five remaining respondents are: (1) Collective; (2) Double Diamond; (3) Effervescent; (4) Gen-X Sports; and (5) Holey Soles.

On April 11, 2008, the ALJ issued his final ID finding no violation of section 337 by the remaining respondents. The Commission extended the deadline for determining whether to review the final ID until June 18, 2008.

On June 18, 2008, the Commission determined to review-in-part the final ID. Particularly, the Commission determined to review: (1) The ALJ's findings concerning non-infringement of the '789 patent by the respondents' products and lack of satisfaction of the technical prong of the domestic industry requirement by Crocs' footwear; and (2) the ALJ's finding of invalidity with respect to the '858 patent.

Having reviewed the record in this investigation, including the final ID and the parties' briefing, the Commission has determined to modify and clarify parts of the final ID concerning non-infringement and lack of satisfaction of the technical prong of the domestic industry requirement relating to the '789 patent and invalidity of the '858 patent. The Commission affirms the final ID with the modifications and clarifications set forth in its separately issued Opinion, and terminates the investigation with a finding of no violation of section 337.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.45 of the Commission's Rules of Practice and Procedure, 19 CFR 210.45.

Issued: July 25, 2008.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–17665 Filed 7–31–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–611]

In the Matter of Certain Magnifying Loupe Products and Components Thereof; Notice of Commission Issuance of a Limited Exclusion Order Against the Infringing Products of Respondent Found in Default; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order against the infringing products of a respondent found in default, and has terminated the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Jonathan J. Engler, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3112. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This investigation was initiated on August 1, 2007, based on a complaint filed by General Scientific Corporation (''GSC'') of Ann Arbor, Michigan. 72 FR 42111 (Aug. 1, 2007). The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), as amended, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain magnifying loupe products and components thereof by reason of infringement of claim 8 of U.S. Patent No. 5,446,507, claim 1 of U.S. Patent No. 6,513,929, or claims 1–5 or 10 of U.S. Patent No. 6,704,141. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337. The complainant requested that the Commission issue an exclusion order and cease and desist orders. The complaint named SheerVision, Inc. (''SheerVision''), of Rolling Hills Estates, California, as well as Nanjing JinJiahe I/E Co. (''Nanjing''), of Jiangsu, China, as respondents.

On January 28, 2008, GSC and respondent SheerVision jointly moved to terminate this investigation with respect to SheerVision based on a settlement agreement and a proposed consent order. On February 8, 2008, the ALJ issued an ID (Order No. 8) granting the motion to terminate. The Commission determined not to review the ID.

On March 10, 2008, GSC filed a motion requesting an order directing respondent Nanjing to show cause why it should not be found in default for failure to respond to the complaint and Notice of Investigation. On March 21, 2008, the ALJ issued Order No. 9, which ordered Nanjing to show cause by April 4, 2008 why it should not be found in default. No response to Order No. 9 was filed. On April 25, 2008, the ALJ issued an ID, Order No. 10, finding Nanjing in default. The Commission determined not to review that ID. Because Nanjing was found to be in default, the Commission issued notice of its consideration of a default remedy, and requested briefing from interested parties on remedy, the public interest, and bonding on May 16, 2008.

The Commission investigative attorney and GSC submitted briefing responsive to the Commission's request on May 30 and May 29, 2008, respectively, and each proposed a limited exclusion order directed to Nanjing's accused products, and recommended allowing entry under bond of 100 percent of entered value during the period of Presidential review.

The Commission found that each of the statutory requirements of section 337(g)(1)(A)–(E), 19 U.S.C. 1337(g)(1)(A)–(E), has been met with respect to the defaulting respondents. Accordingly, pursuant to section 337(g)(1), 19 U.S.C. 1337(g)(1), and Commission rule 210.16(c), 19 CFR 210.16(c), the Commission presumed the facts alleged in the complaint to be true.

The Commission has determined that the appropriate form of relief in this investigation is a limited exclusion order prohibiting the unlicensed entry of certain magnifying loupe products and components thereof, by reason of infringement of one or more of claim 8 of U.S. Patent No. 5,446,507, claim 1 of U.S. Patent No. 6,513,929, and claims 1–5 and 10 of U.S. Patent No. 6,704,141 that are manufactured abroad by or on behalf of, or imported by or on behalf of, Nanjing JinJiahe I/E Co. of Jiangsu, China, or any of its affiliated companies, parents, subsidiaries, or other related business entities, or any of their successors or assigns. The Commission further determined that the public interest factors enumerated in section 337(g)(1), 19 U.S.C. 1337(g)(1), do not preclude issuance of the limited exclusion order. Finally, the Commission determined that the bond under the limited exclusion order during the Presidential review period shall be in the amount of 100 percent of

the entered value of the imported articles. The Commission's order was delivered to the President and the United States Trade Representative on the day of its issuance.

The Commission has terminated this investigation. The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and sections 210.16(c) and 210.41 of the Commission's Rules of Practice and Procedure (19 CFR 210.16(c) and § 210.41).

Issued: July 24, 2008.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. E8–17662 Filed 7–31–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–990 (Review)]

Non-Malleable Cast Iron Pipe Fittings From China

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty order on non-malleable cast iron pipe fittings from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on March 3, 2008 (73 FR 11440) and determined on June 6, 2008 that it would conduct an expedited review (73 FR 34325, June 17, 2008).

The Commission transmitted its determination in this review to the Secretary of Commerce on July 24, 2008. The views of the Commission are contained in USITC Publication 4023 (July 2008), entitled *Non-Malleable Cast Iron Pipe Fittings from China: Investigation No. 731–TA–990 (Review).*

Issued: July 24, 2008.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–17664 Filed 7–31–08; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in section 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[USITC SE–08–021]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: August 7, 2008 at 11 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: None.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–457 and 731–TA–1153 (Preliminary) (Certain Tow-Behind Lawn Groomers and Parts Thereof from China)—briefing and vote. (The Commission is currently scheduled to transmit its determinations to the Secretary of Commerce on or before August 8, 2008; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before August 15, 2008.)
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: July 29, 2008.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. E8–17754 Filed 7–31–08; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Proposed Information Collection Request for Wagner-Peyser Act of 1933, as Amended by the Workforce Investment Act of 1998, Funded Public Labor Exchange and Veterans' Employment and Training Service Funded Labor Exchange (OMB Control Number 1205–0240): Comment Request for Extension Without Changes

AGENCY: Employment and Training Administration.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the collection of data about the Wagner-Peyser Act of 1933, as amended by the Workforce Investment Act of 1998, Funded Public Labor Exchange and Veterans' Employment and Training Service Funded Labor Exchange.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice or by accessing: *http://www.doleta.gov/OMBCN/OMBControlNumber.cfm*.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before September 30, 2008.

ADDRESSES: Submit written comments to Karen A. Staha, Performance and Technology Office, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–5206, Washington, DC 20210. Telephone number: 202–693–3420 (this is not a toll-free number). Fax: 202–693–3490. E-mail: *ETAPerforms@dol.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

States submit quarterly performance data for the Wagner-Peyser funded public labor exchange services through ETA 9002 reports and for Veterans' Employment and Training Services (VETS)-funded labor exchange services through VETS 200 reports. The Employment and Training (ET) Handbook No. 406 contains the report forms and provides instructions for completing these reports. The ET Handbook No. 406 contains a total of eight reports (ETA 9002, A, B, C, D, E$; VETS 200 A, B, C). The ETA 9002 and VETS 200 reports collect data on individuals who receive core employment and workforce information services through the public labor exchange and VETS-funded labor exchange of the states' One-Stop delivery systems. The Employment and Training Administration is proposing

similar changes to the reporting requirements for Workforce Investment Act Programs and the Trade Adjustment Assistance Act Programs. Please note that ETA will seek comments regarding extensions to these collections in separate **Federal Register** notices.

II. Review Focus

The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

Type of Review: Extension without changes.

Agency: Employment and Training Administration.

Title: Wagner-Peyser Act/Jobs for Veterans reporting system (formerly the Labor-Exchange Reporting System (LERS)).

OMB Number: 1205–0240.

Affected Public: State, Local, or Tribal Government Cite/Forms: Wagner-Peyser Act (29 U.S.C. 49) and Jobs for Veterans Act (Pub. L. 107–288). ETA–9002 and VETS 200 reports.

Total Respondents: 54 states and territories.

Frequency: Quarterly.

Total Responses: 1,728 submissions annually—each state submits reports each quarter.

Estimated Total Burden Hours:

Form/activity	Total respondents	Frequency	Total responses	Average time per response	Total annual burden hours
ETA 9002 A	54	Quarterly	216	346	74,641
ETA 9002 B	54	Quarterly	216	346	74,641
ETA 9002 C	54	Quarterly	216	346	74,641
ETA 9002 D	54	Quarterly	216	346	74,641
ETA 9002 E	54	Quarterly	216	21	4,536
VETS 200 A	54	Quarterly	216	346	74,641
VETS 200 B	54	Quarterly	216	346	74,641
VETS 200 C	54	Quarterly	216	346	74,641
Totals	54		1,728		527,020

Total Burden Cost (capital/startup): $1,825,200.

Total Burden Cost (operating/maintaining): $17,128,164.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 25, 2008.

John R. Beverly,

Administrator, Office of Performance and Technology, Employment and Training Administration.

[FR Doc. E8–17649 Filed 7–31–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Proposed Information Collection Request for Trade Adjustment Assistance Reform Act of 2002 (OMB Control Number 1205–0392): Comment Request for Extension Without Changes

AGENCY: Employment and Training Administration.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the collection of data about the Trade Adjustment Assistance Reform Act of 2002.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice or by accessing: *http: //www.doleta.gov/OMBCN/OMBControlNumber.cfm.*

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before September 30, 2008.

ADDRESSES: Submit written comments to Karen A. Staha, Performance and Technology Office, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–5206, Washington, DC 20210. Telephone number: 202–693–3420 (this is not a toll-free number). Fax: 202–693–3490. E-mail: *ETAPerforms@dol.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On June 16, 1998, the Office of Management and Budget (OMB) approved a Government Performance and Results Act (GPRA) compliant performance and participant outcomes data system for the TAA Program; this system was revised in 2000 and is known as the Trade Act\Participant Report (TAPR). States implemented use of the TAPR beginning with the first quarter of the fiscal year 1999 (October through December, 1998), and have continued to collect and report data every quarter since then. The Employment and Training Administration is proposing similar changes to the reporting requirements for Workforce Investment Act Programs and the Wagner-Peyser Act Programs. Please note that ETA will seek comments regarding extensions to these

collections in separate **Federal Register** notices.

II. Review Focus

The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

Type of Review: Extension without changes.

Agency: Employment and Training Administration.

Title: Trade Act Participant Report (TAPR).

OMB Number: 1205–0392.

Affected Public: State, Local, or Tribal Government.

Forms: Trade Adjustment Assistance Reform Act of 2002, see table below for list of forms.

Total Respondents: 50 States.

Frequency: Quarterly and annual.

Total Responses Annually: 50 submissions annually—each state submits TAPR files each quarter.

Average Time per Response: 2.8 hours.

Estimated Total Burden Hours:

TAA burden	Annual national participants	Hours per TAPR record	Annual TAPR burden hours	Applicable hourly rate	Annual TAPR burden dollars
Data Collection	30,000	0.3	9,000	$32.50	$292,500
TAPR Submission	50	2.5	500	32.50	16,250
Total					308,750

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $308,750.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 25, 2008.

John R. Beverly,

Administrator, Office of Performance and Technology, Employment and Training Administration.

[FR Doc. E8–17650 Filed 7–31–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Proposed Information Collection Request for Workforce Investment Act, Title 1B Programs (OMB Control Number 1205–0420): Comment Request for Extension Without Changes

AGENCY: Employment and Training Administration.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the collection of data about the Workforce Investment Act Management Information and Reporting System.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice or by accessing: *http://www.doleta.gov/OMBCN/OMBControlNumber.cfm.*

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before September 30, 2008.

ADDRESSES: Submit written comments to Karen A. Staha, Performance and Technology Office, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–5206, Washington, DC 20210. Telephone number: 202–693–3420 (this is not a toll-free number). Fax: 202–693–3490. E-mail: *ETAPerforms@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Each state administering a grant under the WIA adult, dislocated worker, and youth programs is required to submit quarterly (ETA 9090) and annual (ETA 9091) reports containing information related to levels of participation and performance outcomes for each program. In addition, each state submits a file of individual records on all participants who exit the programs, formally called the Workforce Investment Act Title 1–B Standardized Record Data (WIASRD). These participant records are submitted once a year based on a July-to-June program period. This notice is requesting the extension of the current collection without change.

The Employment and Training Administration is proposing similar changes to the reporting requirements for Wagner-Peyser Employment Service Programs and the Trade Adjustment Assistance Act Programs. Please note that ETA will seek comments regarding extensions to these collections in separate **Federal Register** notices.

II. Review Focus

The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

Type of Review: extension without changes.

Agency: Employment and Training Administration.

Title: Workforce Investment Act, Title 1B.

OMB Number: 1205–0420.

Affected Public: State, Local, or Tribal Government.

Forms: ETA–9090, ETA 9091.

Total Respondents: 53 States and Territories.

Frequency: Quarterly and Annual.

Total Responses Annually: 265.

Average Time per Response: See Tables:

I. WIASRD Record

Record type	Hrs. per job seeker record	PY 02 annual national counts	Annual national burden hours
Adult, DW, NEG Exiters	0.6	435,355	276,450
Youth Exiters	2.0	164,266	328,532
Total		599,621	604,982

II. Quarterly and Annual Summary Reports

Program	Hrs. per year per state	Number of reporting states	Annual national hours
Quarterly Report ETA 9090	640	53	33,920
Annual Report ETA 9091	400	53	21,200
Total	1,040	53	55,120

III. Customer Satisfaction Survey

Survey task	Number of states	Hours per state per task/yr	Total national burden hours/yr
Respondents	53	83.3	4,417
Survey Administration	53	688	36,464
Survey Prep and Overhead	53	154	8,162
Total	53	925.3	49,043

Estimated Total Burden Hours: 709,145.

Total Burden Cost (operating/maintaining): 0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 25, 2008.

John R. Beverly,

Administrator, Office of Performance and Technology, Employment and Training Administration.

[FR Doc. E8–17651 Filed 7–31–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

Fiscal Years (FYs) 2008 Through 2010 Stand Down Grant Award Requests

AGENCY: Veterans' Employment and Training Service (VETS), U.S. Department of Labor (USDOL).

ACTION: Initial announcement of available FY 2008, FY–2009, and FY–2010 funds under the Homeless Veterans' Reintegration Program (HVRP) to Support Local Stand Down Events. Funding Opportunity No.: 17–805.

SUMMARY: The U.S. Department of Labor (USDOL), Veterans' Employment and Training Service (VETS) continues to support local Stand Down events that assist homeless veterans and is now accepting applications for Stand Down grant awards. A Stand Down is an event held in a local community where homeless veterans are provided with a wide variety of social services. Under this announcement, VETS anticipates that up to $400,000 will be available in each of the three fiscal years for grant awards of up to a maximum of $10,000 per multi-day event (more than one day), and a maximum of $7,000 for a one (1) day event. VETS expects to award approximately forty-five (45) grants each fiscal year. Availability of Fiscal Year 2009, and Fiscal Year 2010 funds will be dependent upon Congressional appropriations. Applications for Stand Down funds will be accepted from State Workforce Agencies and State and local Workforce Investment Boards, Veterans Service Organizations (VSO), local public

agencies, and non-profit organizations, including community and faith-based organizations. USDOL is not authorized to award grant funds to organizations that are registered with Internal Revenue Service (IRS) as a 501(c)(4) organization.

Application for Stand Down grant funding are to be submitted to the appropriate State Director of Veterans Employment and Training/ Grant Officer Technical Representative (DVET/GOTR). Address and contact information for each State DVET/GOTR can be found at Web site address: *http://www.dol.gov/vets/aboutvets/contacts/main.htm*.

To be considered for FY–2008 funding, applications must be received within thirty (30) days of this announcement. This will allow for obligation of funds prior to 9/30/08. Any events approved in Fiscal Year 2008 must be held prior to 12/31/08.

Applications for other events planned in Fiscal Year 2009 must be received at least sixty (60) days prior to the event and no later than July 30, 2009.

Applications for events planned in Fiscal Year 2010 must be received at least sixty (60) days prior to the event and no later than July 30, 2010.

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

Stand Down is a military term referring to an opportunity to achieve a brief respite from combat. Troops would assemble in a base camp to receive new clothing, hot food, and a relative degree of safety before returning to the front. Today more than 160 organizations across the country partner with local businesses, government agencies, and community- and faith-based service providers to hold Stand Down events for homeless veterans and their families in the local community.

Each year, the Assistant Secretary for Veterans' Employment and Training awards Homeless Veterans' Reintegration Program (HVRP) grants to programs that enhance employment and training opportunities and/or promote self-sufficiency for homeless veterans. Residual HVRP funds can be awarded as grants to organizations sponsoring Stand Down events for homeless veterans.

The critical services provided at a Stand Down are often the catalyst that enables homeless veterans to reenter mainstream society. Typically, some of the services available at these events include temporary shelter, showers, haircuts, meals, clothing, hygiene kits, medical examinations, immunizations, legal advice, State identification cards, veterans benefit information, training program information, employment services, and referral to other supportive services. For the purpose of this Stand Down grant award, applicants must plan (and indicate in writing in their grant application package) to provide the following minimum services to homeless veteran participants:

Department of Veterans Affairs medical and mental health services;

Department of Labor—State Workforce Agency employment and training services to include Disabled Veterans' Outreach Program and Local Veterans' Employment Representatives participation where available;

An assortment of hot and/or cold foods to provide to homeless veteran participants;

An assortment of clothing appropriate for the local climate to provide to homeless veteran participants; and

Referral services to secure emergency housing on-the-spot for homeless veteran participants.

II. Allowable Costs

Stand Down grant funds must be used to enhance employment and training opportunities or to promote self-sufficiency for homeless veterans. The funds may be used to support Stand Down activities such as:

The purchase of food, bottled water, clothing, sleeping bags, one-person tents, backpacks filled with non-perishable foods, and hygiene care kits;

Rental of facilities and/or tents for the duration of the Stand Down event;

Payment for special one-time electricity costs, equipment rentals, advertising, event posters, portable toilets, janitorial/kitchen supplies, and communications/Internet access for the duration of the Stand Down event;

The hiring of security personnel for the duration of the event;

Rental of transportation equipment (bus, van, car, taxi, etc.) and/or actual gasoline expenses of volunteer drivers to provide transportation of homeless veterans to and from the Stand Down event; and

Other pertinent items and services for homeless veteran participants as deemed appropriate by USDOL—VETS.

III. Funding Restrictions

Stand Down grant funds may not be used to pay for administrative costs and administrative and/or programmatic staff, because these events are usually an all ''volunteer'' effort. Stand Down grant funds may not be used to purchase special monogrammed tee shirts, pen sets, specialty hats (unless for cold weather use), military and veteran type patches, memento gifts for staff members/visitors/volunteers, and any other supplementary/replacement item(s) that has not been approved by the DVET/GOTR.

IV. Award Information

The maximum amount that can be awarded to support a local Stand Down event is $10,000 per applicant per year. If the event is held for one (1) day, the maximum amount that can be awarded is $7,000.

V. Eligibility Information

1. Eligible Applicants

Eligible applicants will generally fall into one of the following categories: State and local Workforce Boards, Veteran Service Organizations, local public agencies, and non-profit organizations including community and faith-based organizations. Organizations registered with the Internal Revenue Service as a 501 (c) (4) organizations are not eligible to apply for this funding opportunity.

2. Cost Sharing or Matching

Cost Sharing and matching funds are not required. However, we strongly encourage applicants to maximize the resources available to the Stand Down event and its homeless veteran participants.

3. Other Eligibility Requirements

Applicant Registration Requirements: All applicants for Federal funding are required to include a Dun and Bradstreet Number (DUNS) with their application. Applicants can obtain a DUNS number through the following Web site: *http://www.dunandbradstreet.com/* or by phone at 1–866–705–5711.

A. After receiving a DUNS number, all grant applicants must also register as a vendor with the Central Contractor Registration (CCR) through the following Web site: *http://www.ccr.gov* or by phone at 1–888–227–2423. CCR registration should become active within 24 hours of completion. If grant applicants have questions regarding registration, please contact the CCR Assistance Center at 1–888–227–2423.

After registration, grant applicants will receive a confirmation number.

Grantee listed point of Contact will receive a Trader Partnership Identification Number (TPIN) via mail. The TPIN is, and should remain, a confidential password.

VI. Application Content

To be considered responsive, all applications for Stand Down funding must include:

Applicant letter requesting Stand Down funds (original signed in blue ink);

1. Application for Federal Assistance, Standard Form (SF) 424 (OMB No. 4040–0004) (original signed in blue ink). **Also Note**: The 02 version of the SF–424 which expires on 1/31/2009 must now be used. The Grant Officer will not accept previously issued versions of the SF–424.

2. SF–424A, Budget Information (OMB No. 4040–0006)—Non-Construction Programs (SF–424 and SF–424A forms can be downloaded from the following Web site: *www.grants.gov)*;

Budget Narrative—a detailed description of each planned expenditure listed on the SF–424A. The description should provide the methodology used in determining the cost estimates such as quantity and if the item will be purchased or rented. Please indicate whether the items will be utilized by the participants or assist the volunteer(s) at the event;

Complete the Direct Cost Description for Applicants and Sub-Applicants (see Appendix D);

Demonstrate and document Stand Down Activities and develop a timeline for completion of activities. For Stand Down events that occur on or after July 1st, grant applicants must demonstrate and document planning activities prior to the end of the Fiscal Year (September 30th);

Original signed Assurances and Certifications Signature Page (see Appendix C);

Complete the Survey on Ensuring Equal Opportunity for Applicants (OMB No. 1894–0010) (see Appendix E);

3. A copy of the Central Contractor Registration (CCR) confirmation number. Please do not send the Trader Partnership Identification Number (TPIN) (see Section III.3.A.);

Letters of support, particularly from the local One-Stop Career Centers and/or Disabled Veterans' Outreach Program Specialists (DVOPs) and Local Veterans' Employment Representative (LVER) staff, the Department of Veterans Affairs, Department of Housing and Urban Development (HUD) or the local Continuum of Care (COC), Veterans' Service Organizations (VSO), State and local government agencies, local businesses, local non-profit organizations including community-based and faith-based organizations, etc; when applicable; and

A copy of the Internal Revenue Service documentation indicating approval of non-profit status (for example: 501(c)(3), 501(c)(19), etc.) as required to verify eligibility when claiming non-profit status.

VII. Award Administration Information

Stand Down funding is a non-competitive grant awarded on a first-come, first-served basis until available residual funding is exhausted. Funding is subject to approval by the Grant Officer. If approved, the grantee will receive a grant award document and financial form to complete in order for USDOL Office of Financial Management to set-up an account in the Health and Human Services, Payment Management System (HHS/PMS) to electronically draw down funds.

If awarded funds, the grantee must submit the completed HHS/PMS financial forms directly to the USDOL, Division of Financial Management Operations in order to electronically draw down funds. The financial forms should be sent via FedEx, UPS, or other non-U.S. Postal Service provider to avoid processing delays. If grantee has previously set-up an electronic HHS/PMS account, additional awarded funds will be added into that existing bank account unless otherwise notified in writing. Questions or problems relating to the HHS/PMS paperwork or processes should be referred to the USDOL Office of Financial management at (202) 693–4479.

Upon receipt of grant award financial documents, HHS/PMS will forward a packet of instructions to the grantee on how to set up a payment account. After setting up the account, the grantee will be able to draw down funds to reimburse approved expenses already incurred and to cover approved expenses that will be paid within three (3) days of the draw down. Funds requested for draw down through the HHS/PMS are directly deposited into the account within 24 hours of the request.

Since grantees may draw funds down in more than one quarter, up to and after the date of the Stand Down event, grantees are required to complete a PSC Federal Cash Transaction Report (PS 272) no later than forty-five (45) days after the end of each quarter in which grantees received all or part of their grant award (February 15th, May 15th, August 15th, and November 15th). Instructions for completing this requirement are provided in the HHS/PMS information packet. Grantees are to print hard copies of all PSC 272s submitted to HHS/PMS and provide them with their After Action Activity and Expenditure Report submitted to their appropriate DVET/GOTR.

VIII. Required Post-Event Reporting

No later than forty-five (45) calendar days after the Stand Down event, grantees must submit the Stand Down Report of actual activities and expenditures to the appropriate DVET/GOTR and to the USDOL Procurement Services. If grantees experience any delay in submitting this report, they should immediately contact their appropriate DVET/GOTR and provide a justification to request an extension.

The following documents are required to be submitted by the grantees to their appropriate DVET/GOTR, within forty-five (45) days after completion of the Stand Down event:

An original signed invoice or list of all items purchased with USDOL–VETS grant funding;

Original sales receipts of items purchased with USDOL–VETS funding;

Comparison of planned budget items (per object class categories listed on the SF 424A) vs. actual expenditures. Note, some planned expenditure items are donated at the last minute for these events, therefore, actual expenditures are subject to change. If budget revisions are needed, grantees are to seek prior approval from their appropriate DVET/GOTR;

- SF 269A, Financial Status Reports are to be electronically data entered into E-grants and a signed and dated copy provided to the appropriate DVET/GOTR. Access to E-grants will be provided upon award. SF 269A Financial Status Report forms are available for download at: *www.grants.gov*);

The Stand Down After Action Report (see Appendix F); and

Copies of all PSC 272s that were also submitted to HHS/PMS.

Grantees are to submit the Stand Down Activity and Expenditure Report to the appropriate DVET/GOTR. The DVET/GOTR will review the report to ensure it is complete and accurate and that all expenditures are appropriate, and allowable.

To prevent processing delays and/or the need to recoup over payments, grantees should wait for notification from the DVET/GOTR that the report has been reviewed and approved at the VETS regional level prior to entering financial reports into E-grants, and prior to sending the originals to Procurement Services. After notification from the DVET/GOTR, grantees are to distribute the Activity and Expenditure Report as follows:

1. The original SF 269A, signed invoice or list of expenditures and the Stand Down After Action Report is mailed to: U.S. Department of Labor, Procurement Services Center, Room S–4307, Attn: Cassandra Mitchell, 200 Constitution Avenue, NW., Washington, DC 20210.

Original sales receipts of items purchased with USDOL–VETS funding, a copy of the signed SF 269A, signed invoice or signed list of expenditures, a comparison of actual versus planned activities and expenditures, Stand Down After Action Report, and copies of all PSC 272s sent to HHS/PMS are to be submitted to the appropriate DVET/GOTR.

If the DVET/GOTR does not recommend approval of a particular expenditure, he/she will notify the grantee in writing with an explanation for the disapproval and instruct grantee to electronically return the funds within 15 calendar days to the HHS/PMS account if already drawn down. All FY 2008 Stand Down awarded funds must be electronically drawn down by no later than November 30, 2008. If Stand Down funds are not electronically drawn down by the grantee within 90 calendar days following the commencement of the Stand Down event and if practicable, the USDOL may reallocate these funds for other purposes accordingly.

Any grantee who fails to comply with the guidance set forth in the Stand Down Special Grant Provisions and reporting requirements will not be considered favorably from any future funding from U.S. Department of Labor Veterans' Employment and Training Service.

IX. Agency Contacts

Questions regarding this announcement should be directed to the DVET/GOTR in your State. Contact information for each DVET/GOTR is located in the VETS Staff Directory at the following Web page: *http://www.dol.gov/vets/aboutvets/contacts/main.htm* or access the staffing directory at Web site address: *http://www.dol.gov/vets.*

X. Other Information

Current competitive HVRP grantees are not eligible for a separate non-competitive Stand Down grant award as described in this announcement. Current competitive HVRP grantees are authorized to utilize existing funds for Stand Down purposes.

Appendices: (Located on U.S. Department of Labor, Veterans' Employment and Training Service Web page *www.dol.gov/vets* follow link for 2008 Stand Down Grants and Required Forms listed under announcements.)

Appendix A: Application for Federal Assistance SF–424

Appendix B: Budget Information Sheet SF–424A

Appendix C: Certifications and Assurances Signature Page

Appendix D: Direct Cost Description for Applicants and Sub-Applicants

Appendix E: Survey on Ensuring Equal Opportunity for Applicants

Appendix F: Stand Down After Action Report

OMB Information Collection No. 1205–0458 Expires September 30, 2009

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. Public reporting burden for this collection of information is estimated to average 20 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimated or any other aspect of this collection of information, including suggestions for reducing this burden, to: OIRA Desk Officer for VETS/DOL, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503.

Please do not send your completed application to the OMB. Send it to the sponsoring agency as specified in this solicitation.

Signed at Washington, DC, this 25th day of July 2008.

Cassandra Mitchell,

Grant Officer.

[FR Doc. E8–17622 Filed 7–31–08; 8:45 am]

BILLING CODE 4510–79–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 08–08]

Notice of Amendment To Compact With the Government of the Republic of Madagascar

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: In accordance with Section 609(i)(2) of the Millennium Challenge Act of 2003, as amended (Pub. L. 108–199, Division D), the Millennium Challenge Corporation is publishing a summary, justification and the complete text of the Amendment to Millennium Challenge Compact between the United States of America, acting through the Millennium Challenge Corporation, and the Government of the Republic of Madagascar. Representatives of the United States Government and the Government of the Republic of Madagascar executed the Amendment documents on July 24, 2008 and July 15, 2008, respectively.

Dated: July 29, 2008.

Henry Pitney,

Deputy General Counsel, Millennium Challenge Corporation.

Summary of Amendment to Millennium Challenge Compact With the Government of the Republic of Madagascar

The Board of Directors of the Millennium Challenge Corporation (*MCC*) has approved an amendment (the *Amendment*) to the existing approximately $109.8 million, four-year Millennium Challenge Compact between the United States of America, acting through MCC, and the Government of the Republic of Madagascar (the *Compact*).

Background

The Compact was signed April 18, 2005, entered into force on July 27, 2005 and, under its original terms, would have terminated on July 26, 2009. It is the only compact entered into by MCC with a four-year rather than a five-year term. The main objectives of the Compact consist of raising incomes in rural areas by increasing land rights security and improving land administration capacity, expanding the financial sector, and increasing investment in farms and other rural businesses in five high-potential geographic zones. The extension of the Compact term is intended to allow a more complete achievement of the Compact's goals and enhance the sustainability of the investments being made under the Compact.

Scope of the Amendment

The Amendment extends the term of the Compact for a single additional year without making changes to either the scope of program activities or the level of funds currently obligated under the Compact. The Amendment also conforms the Compact's administrative winding up provision to the related provision in other compacts that have been entered into since the Compact was signed. Finally, the Amendment updates information with respect to the title of the MCC principal representative under the Compact.

Reasons for the Amendment

The Government of Madagascar is unlikely to achieve all of the project objectives as defined in the Compact by its original termination date in July 2009. While MCC's and the Government of Madagascar's efforts continue to keep Compact objective realization moving forward and are resulting in increased disbursement rates, the time allotted for implementation of several major

contracts is insufficient to reach certain targets. In certain cases, MCC was not willing to allow construction contracts to be entered into absent a five-year term for the Compact. With an extension of one year to the term of the Compact, the likelihood of achieving project objectives will improve substantially, and the probability of sustaining these activities once Compact funding ceases will increase.

The fifth year extension will better position the Government of Madagascar to fully implement the Compact's planned activities, achieve the targets set forth in the Compact's monitoring and evaluation plan, and ultimately better allow for the sustainable poverty reduction impact contemplated by the Compact.

Examples of the implementation activities that will be supported by the additional year of the Compact term include the following.

A. Land Tenure Project

The extended term will provide the Compact's Land Tenure Project time to better implement activities related to the modernization and decentralization of land services and information gathering and dissemination in Madagascar. One component of these activities is the construction of decentralized land offices in beneficiary communities and the rehabilitation or new construction of regional Land Administration offices. The fifth year will reduce the risk that planned construction will not be completed and provide time for an adequate guarantee period following the completion of construction. The extended term will also help ensure the sustainability of the reforms achieved and implemented through the Land Tenure Project by allowing additional time for the provision of adequate technical assistance to strengthen the institutional and human resource capacity of the land services providers at the regional and local levels.

B. Finance Project

The amended Compact term will provide the time necessary to allow the largest activity in the Finance Project—the creation of a national payment system—to be more effectively completed. The additional year will provide the time necessary to build the Central Bank of Madagascar's technical capacity to operate and sustain the system. The extended Compact term will also allow adequate time for the construction of the new branches for the Madagascar National Savings Bank contemplated by the Compact, a critical activity aimed at providing low-cost savings accounts to the people of four districts in rural Madagascar where such accounts currently are unavailable.

C. Agriculture Business Investment Project (ABIP)

The one-year extension of the Compact term will provide ABIP time to broaden and deepen its activities related to increasing farm and small business revenue and investment opportunities. It will provide an opportunity for farmers to work with project staff to adopt improved production techniques during additional crop production cycles. In addition, it will provide time for an adequate guarantee period following the completion of the construction of the agricultural business centers that will serve as regional hubs for post-Compact technical assistance. The additional year will also allow the agricultural business centers to further test and strengthen their operational model to better ensure that delivery of services to farmers, associations and rural small enterprises can be sustained into the future.

Amendment to Millennium Challenge Compact Between the Government of the Republic of Madagascar and the United States of America Acting Through the Millennium Challenge Corporation

Amendment to Millennium Challenge Compact

This Amendment to Millennium Challenge Compact (this ''Amendment'') is made by and between the Government of the Republic of Madagascar (the ''Government'') (referred to herein individually as a ''Party'' and collectively, the ''Parties''), and the United States of America, acting through the Millennium Challenge Corporation, a United States Government corporation (''MCC''). All capitalized terms used in this Amendment that are not otherwise defined have the meanings given to such terms in the Compact.

Recitals

Whereas, MCC and the Government signed the Millennium Challenge Compact by and between the United States of America, acting through the MCC, and the Government, on April 18, 2005 (the ''Compact'');

Whereas, the Compact currently provides for a Compact Term of four years from the date of the Compact's entry into force, July 27, 2005;

Whereas, pursuant to the Compact, MCC grants to the Government, subject to the terms and conditions of the Compact, MCC Funding in an amount not to exceed One Hundred Nine Million Seven Hundred and Seventy-Three Thousand United States Dollars (US$109,773,000) during the Compact Term to enable the Government to implement the Program and achieve the Objectives outlined in the Compact;

Whereas, to better facilitate the proper implementation and achievement of certain of the Objectives, MCC and the Government wish to extend the Compact Term for one additional year; and

Whereas, pursuant to Section 5.3 of the Compact, the Parties desire to amend the Compact as set forth in this Amendment;

Now, therefore, in consideration of the foregoing and the mutual covenants and agreements set forth herein and in the Compact, the Parties hereby agree as follows:

Amendment to Section 1.3

Section 1.3 of the Compact is amended by deleting the last sentence in its entirety and replacing it with the following:

This Compact shall remain in force for five years from the date of entry into force of this Compact, unless earlier terminated in accordance with Section 5.4 (the ''Compact Term'').

Amendment to Section 5.1

Section 5.1 of the Compact is amended by replacing the notice information for MCC with the following:

To MCC: Millennium Challenge Corporation, *Attention:* Vice President for Compact Implementation (with a copy to the Vice President and General Counsel), 875 15th Street, NW., Washington, DC 20005, United States of America, *Facsimile:* (202) 521–3700, *E-mail: VPImplementation@mcc.gov* (Vice President for Compact Implementation); *VPGeneralCounsel@mcc.gov* (Vice President and General Counsel).

Amendment to Section 5.2

Section 5.2 of the Compact is amended by deleting the words ''Vice President for Country Relations'' and replacing them with ''Vice President for Compact Implementation.''

Amendment to Section 5.4(e)

Section 5.4(e) of the Compact is amended by deleting the text of the section in its entirety and replacing it with the following:

All MCC Funding shall terminate upon the expiration, suspension, or termination of this Compact; provided, however, that MCC Funding may be used, in compliance with this Compact and any relevant Supplemental Agreement, to pay for (i) reasonable expenditures for goods, works and services that are properly incurred under or in furtherance of this Compact before the

expiration, suspension or termination of this Compact, provided that the request for such payment is properly submitted within sixty (60) days after such expiration, suspension or termination, and (ii) reasonable expenditures (including administrative expenses) properly incurred in connection with the winding up of the Program within one-hundred and twenty (120) days after the expiration, suspension or termination of this Compact.

Further Assurances

Each Party hereby covenants and agrees, without necessity of any further consideration, to execute and deliver any and all such further documents and take any and all such other action as may be reasonably necessary or appropriate to carry out the intent and purpose of this Amendment.

Effect of This Amendment

From and after the date this Amendment enters into force in accordance with Section 8 of this Amendment, the Compact and this Amendment shall be read together and construed as one document, and each reference in the Compact to the ''Compact,'' ''hereunder,'' ''hereof'' or words of like import referring to the Compact, and each reference to the ''Compact,'' ''thereunder,'' ''thereof'' or words of like import in any Supplemental Agreement or in any other document or instrument delivered pursuant to the Compact or any Supplemental Agreement, shall mean and be construed as a reference to the Compact, as amended by this Amendment.

Limitations

Except as expressly amended by this Amendment, all of the provisions of the Compact remain unchanged and in full force and effect.

Entry Into Force of This Amendment

This Amendment shall enter into force upon its signature by each of the Parties. Signature page begins on the next page.

In witness whereof, the undersigned, duly authorized by their respective governments, have signed this Amendment at:

Antananarivo, Madagascar on July 15, 2008, by Marius Ratolojanahary, Minister of Land Reform, Estate and Country Planning for the Government of the Republic of Madagascar; and

Washington, DC, United States of America on July 24, 2008, by Darius Mans, Vice President for Compact Implementation, Millennium Challenge Corporation, on behalf of the United States of America.

[FR Doc. E8–17706 Filed 7–31–08; 8:45 am]

BILLING CODE 9211–03–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Form 396, ''Certification of Medical Examination by Facility Licensee.''

2. *Current OMB approval number:* 3150–0024.

3. *How often the collection is required:* Upon application for an initial operator license, every six years for the renewal of operator or senior operator license, and upon notices of disability.

4. *Who is required or asked to report:* Facility licensees who are tasked with certifying the medical fitness of an applicant or licensee.

5. *The number of annual respondents:* 137.

6. *The number of hours needed annually to complete the requirement or request:* 793 (323 hours for reporting [.25 hours per response], and 470 hours for recordkeeping [3.4 hours per recordkeeper].

7. *Abstract:* NRC Form 396 is used to transmit information to the NRC regarding the medical condition of applicants for initial operator licenses or renewal of operator licenses and for the maintenance of medical records for all licensed operators. The information is used to determine whether the physical condition and general health of applicants for operator licensees is such that the applicant would not be expected to cause operational errors and endanger public health and safety.

Submit, by September 30, 2008, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft 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, MD 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 submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Comments submitted should reference Docket No. NRC–2008–0416. You may submit your comments by any of the following methods. Electronic comments: Go to *http://www.regulations.gov* and search for Docket No. NRC–2008–0416. Mail comments to NRC Clearance Officer, Russell Nichols (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Questions about the information collection requirements may be directed to the NRC Clearance Officer, Russell Nichols (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–6874, or by e-mail to *INFOCOLLECTS.Resource@NRC.GOV.*

Dated at Rockville, Maryland, this 24th day of July 2008.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

Acting NRC Clearance Officer, Office of Information Service.

[FR Doc. E8–17663 Filed 7–31–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–293]

In the Matter of: Entergy Nuclear Operations, Inc.; Entergy Nuclear Generation Company (Pilgrim Nuclear Power Station); Order Approving Indirect Transfer of Facility Operating License

I

Entergy Nuclear Operations, Inc. (ENO) and Entergy Nuclear Generation

Company (Entergy Nuclear) are co-holders of the Facility Operating License, No. DPR–35, which authorizes the possession, use, and operation of the Pilgrim Nuclear Power Station (Pilgrim). Pilgrim is a boiling water nuclear reactor that is owned by Entergy Nuclear and operated by ENO. The facility is located on the western shore of Cape Cod in the town of Plymouth on the Entergy Nuclear site in Plymouth County, Massachusetts.

II

By application dated July 30, 2007, as supplemented by letters dated October 31, and December 5, 2007, and January 24, March 17, April 22, and May 2, 2008, ENO, acting on behalf of itself and Entergy Nuclear, requested that the U.S. Nuclear Regulatory Commission (NRC, the Commission), pursuant to Section 50.80 of Title 10 of the *Code of Federal Regulations* (10 CFR), consent to the proposed indirect transfer of control of the Pilgrim license.

Entergy Nuclear is currently a direct wholly owned subsidiary of Entergy Nuclear Holding Company #1. Seventy-five percent of Entergy Nuclear Holding Company #1 is directly owned by Entergy Corporation while the remaining 25 percent is directly owned by Entergy Global, LLC. Entergy Global, LLC is a direct wholly owned subsidiary of Entergy International Holdings LTD which, in turn, is a direct wholly owned subsidiary of Entergy Corporation. Therefore, under the current corporate structure, Entergy Corporation is the indirect owner of 100 percent of Entergy Nuclear.

Under the proposed corporate restructuring, a new holding company, Enexus Energy Corporation (Enexus), will be created. Initially, the shareholders of Entergy Corporation will separately own the shares of Enexus and, as such, Enexus will be owned by the public. Entergy Nuclear Holding Company #1 will become a direct wholly owned subsidiary of Enexus and both Entergy Global, LLC and Entergy International Holdings LTD will be eliminated. Accordingly, following the corporate restructuring, Enexus will acquire indirect control of 100 percent of Entergy Nuclear.

ENO, the operator of the Pilgrim facility, is currently a direct wholly owned subsidiary of Entergy Nuclear Holding Company #2 which, in turn, is a direct wholly owned subsidiary of Entergy Corporation. Therefore, Entergy Corporation is currently the indirect owner of 100 percent of ENO.

Under the proposed corporate restructuring, Entergy Nuclear Holding Company #2 will be eliminated and ENO will become a direct subsidiary of a new parent company called EquaGen, LLC. EquaGen, LLC will be owned in equal shares by two new intermediate holding companies as follows. Entergy EquaGen, Inc. is being created as a direct subsidiary of Entergy Corporation and will own 50 percent of EquaGen, LLC. Similarly, Enexus EquaGen, LLC is being created as a direct subsidiary of Enexus and will also own 50 percent of EquaGen, LLC. Accordingly, following the corporate restructuring, Entergy Corporation and Enexus will each have indirect control of 50 percent of ENO.

Finally, ENO will be converted from a corporation to a limited liability company and its name will be changed from Entergy Nuclear Operations, Inc. to EquaGen Nuclear, LLC. Under Delaware law, EquaGen Nuclear, LLC will assume all of the rights and responsibilities of ENO, and it will be the same company (legal entity) both before and after the conversion and name change. Also, Entergy Nuclear will undergo a name change to become Enexus Nuclear Generation Company. The staff understands that ENO will request an administrative license amendment to conform the Pilgrim license in the near future.

Notice of the request for approval and an opportunity for a hearing was published in the **Federal Register** on January 16, 2008 (73 FR 2951). By petition dated February 5, 2008, Locals 369 and 590, Utility Workers Union of America (UWUA), American Federation of Labor-Congress of Industrial Organization, representing plant workers at the Pilgrim facility, responded to the **Federal Register** notice and requested a hearing and leave to intervene as a party in the Pilgrim proceeding. On June 12, 2008, Local 369 filed a notice of withdrawal of its petition to intervene. The notice of withdrawal did not apply to Local 590.

The request for a hearing is currently pending before the Commission. Pursuant to 10 CFR 2.1316, during the pendency of a hearing, the staff is expected to promptly proceed with the approval or denial of license transfer requests consistent with the staff's findings in its safety evaluation. Notice of the staff's action shall be promptly transmitted to the presiding officer and parties to the proceeding. Commission action on the pending hearing requests is being handled independently of this action.

Pursuant to 10 CFR 50.80(a), no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application as supplemented and other information before the Commission, and relying upon the representations and agreements in the application as supplemented, the NRC staff concludes that the proposed indirect transfer of control of the license held by Entergy Nuclear to Enexus, as described herein, will not affect the qualifications of Entergy Nuclear as holder of the Pilgrim license. The indirect transfer of control of the license is otherwise consistent with applicable provisions of law, regulations, and orders issued by the NRC. Furthermore, the NRC staff concludes that the proposed corporate restructuring involving new intermediate and ultimate parent companies over ENO, as described herein, will not affect the qualifications of ENO as holder of the Pilgrim license. The indirect transfer of control of the license as held by ENO, to the extent affected by the proposed restructuring, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission.

The NRC staff concludes that the conversion of Entergy Nuclear Operations, Inc. to EquaGen Nuclear, LLC would not constitute a direct transfer of the licenses to the extent held by ENO. Therefore, no consent to the proposed conversion is necessary.

The findings set forth above are supported by the NRC's safety evaluation dated July 28, 2008.

III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, IT IS HEREBY ORDERED that the application regarding the indirect license transfer discussed above related to the proposed corporate restructuring and establishment of Enexus is approved, subject to the following conditions:

1. Entergy Nuclear shall enter into the $700 million Support Agreement with Enexus Energy Corporation as described in the application, no later than the time the proposed transactions and indirect license transfer occurs. Entergy Nuclear shall take no action to cause Enexus Energy Corporation, or its successors and assigns, to void, cancel, or modify the Support Agreement or cause it to fail to perform, or impair its performance under the Support Agreement, without prior written consent of the NRC. The Support Agreement may not be amended or modified without 30 days prior written notice to the Director of the Office of Nuclear Reactor Regulation

or his designee. An executed copy of the Support Agreement shall be submitted to the NRC no later than 30 days after the completion of the proposed transactions and the indirect license transfer. Entergy Nuclear shall inform the NRC in writing anytime it draws upon the Support Agreement.

2. The ten separate support guarantees from various Entergy subsidiaries, which total $315 million, including the support guarantee relating to Pilgrim, may be revoked when, and conditioned upon, implementation of the new $700 million Support Agreement at the time the proposed restructuring and indirect license transfer are completed.

3. Should the proposed corporate restructuring and establishment of Enexus not be completed within one year from the date of this Order, this Order shall become null and void, provided, however, upon written application and good cause shown, such date may be extended by Order.

This Order is effective upon issuance.

For further details with respect to this Order, see the application dated July 30, 2007, as supplemented by letters dated October 31, and December 5, 2007, and January 24, March 17, April 22, and May 2, 2008, and the NRC's safety evaluation dated July 28, 2008, which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland and accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland this 28th day of July 2008.

For the Nuclear Regulatory Commission.

Timothy J. McGinty,

Acting Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E8–17677 Filed 7–31–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–271 and 72–59]

In the Matter of Entergy Nuclear Operations, Inc.; Entergy Nuclear Vermont Yankee, LLC (Vermont Yankee Nuclear Power Station); Order Approving Indirect Transfer of Facility Operating License

I

Entergy Nuclear Operations, Inc. (ENO) and Entergy Nuclear Vermont Yankee, LLC (EN-Vermont Yankee) are co-holders of the Facility Operating License, No. DPR–28, which authorizes the possession, use, and operation of the Vermont Yankee Nuclear Power Station (Vermont Yankee). Vermont Yankee is a boiling water nuclear reactor that is owned by EN-Vermont Yankee and operated by ENO. The facility is located in the town of Vernon, Windham County, Vermont.

II

By application dated July 30, 2007, as supplemented by letters dated October 31, and December 5, 2007, and January 24, March 17, April 22, and May 2, 2008, ENO, acting on behalf of itself and EN-Vermont Yankee, requested that the U.S. Nuclear Regulatory Commission (NRC, the Commission), pursuant to Section 50.80 of Title 10 of the *Code of Federal Regulations* (10 CFR), consent to the proposed indirect transfer of control of the Vermont Yankee license, including the general license for the independent spent fuel storage installation.

EN-Vermont Yankee is currently a direct wholly owned subsidiary of Entergy Nuclear Vermont Investment Company, LLC which, in turn, is a direct wholly owned subsidiary of Entergy Nuclear Holding Company #3, LLC. Entergy Nuclear Holding Company #3, LLC is a direct wholly owned subsidiary of Entergy Nuclear Holding Company which, in turn, is a direct wholly owned subsidiary of Entergy Corporation. Therefore, under the current corporate structure, Entergy Corporation is the indirect owner of 100 percent of EN-Vermont Yankee.

Under the proposed corporate restructuring, a new holding company, Enexus Energy Corporation (Enexus), will be created. Initially, the shareholders of Entergy Corporation will separately own the shares of Enexus and, as such, Enexus will be owned by the public. Entergy Nuclear Holding Company will become a direct wholly owned subsidiary of Enexus. Accordingly, following the corporate restructuring, Enexus will acquire indirect control of 100 percent of EN-Vermont Yankee.

ENO, the operator of the Vermont Yankee facility, is currently a direct wholly owned subsidiary of Entergy Nuclear Holding Company #2 which, in turn, is a direct wholly owned subsidiary of Entergy Corporation. Therefore, Entergy Corporation is currently the indirect owner of 100 percent of ENO.

Under the proposed corporate restructuring, Entergy Nuclear Holding Company #2 will be eliminated and ENO will become a direct subsidiary of a new parent company called EquaGen, LLC. EquaGen, LLC will be owned in equal shares by two new intermediate holding companies as follows. Entergy EquaGen, Inc. is being created as a direct subsidiary of Entergy Corporation and will own 50 percent of EquaGen, LLC. Similarly, Enexus EquaGen, LLC is being created as a direct subsidiary of Enexus and will also own 50 percent of EquaGen, LLC. Accordingly, following the corporate restructuring, Entergy Corporation and Enexus will each have indirect control of 50 percent of ENO.

Finally, ENO will be converted from a corporation to a limited liability company and its name will be changed from Entergy Nuclear Operations, Inc. to EquaGen Nuclear, LLC. Under Delaware law, EquaGen Nuclear, LLC will assume all of the rights and responsibilities of ENO, and it will be the same company (legal entity) both before and after the conversion and name change. Also, EN-Vermont Yankee will undergo a name change to become Enexus Nuclear Vermont Yankee, LLC. The staff understands that ENO will request an administrative license amendment to conform the Vermont Yankee license in the near future.

Notice of the request for approval and an opportunity for a hearing was published in the **Federal Register** on January 16, 2008 (73 FR 2953). By petition dated February 5, 2008, Locals 369 and 590, Utility Workers Union of America (UWUA), American Federation of Labor-Congress of Industrial Organization, representing plant workers at the Pilgrim Nuclear Power Station located in Plymouth, Massachusetts, responded to the **Federal Register** notice and requested a hearing and leave to intervene as a party in the proceeding for Vermont Yankee. On June 12, 2008, Local 369 filed a notice of withdrawal of its petition to intervene. The notice of withdrawal did not apply to Local 590.

The request for a hearing is currently pending before the Commission. Pursuant to 10 CFR 2.1316, during the

pendency of a hearing, the staff is expected to promptly proceed with the approval or denial of license transfer requests consistent with the staff's findings in its safety evaluation. Notice of the staff's action shall be promptly transmitted to the presiding officer and parties to the proceeding. Commission action on the pending hearing request is being handled independently of this action.

Also, an intervenor from Oswego, New York, submitted two letters to the Commission with public comments dated January 21, 2008, along with an electronic transmission containing public comments dated January 27, 2008. The public comments are addressed by the NRC's safety evaluation dated July 28, 2008.

Pursuant to 10 CFR 50.80(a), no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application as supplemented and other information before the Commission, and relying upon the representations and agreements in the application as supplemented, the NRC staff concludes that the proposed indirect transfer of control of the license held by EN-Vermont Yankee to Enexus, as described herein, will not affect the qualifications of EN-Vermont Yankee as holder of the Vermont Yankee license. The indirect transfer of control of the license is otherwise consistent with applicable provisions of law, regulations, and orders issued by the NRC. Furthermore, the NRC staff concludes that the proposed corporate restructuring involving new intermediate and ultimate parent companies over ENO, as described herein, will not affect the qualifications of ENO as holder of the Vermont Yankee license. The indirect transfer of control of the license as held by ENO, to the extent affected by the proposed restructuring, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission.

The NRC staff concludes that the conversion of Entergy Nuclear Operations, Inc. to EquaGen Nuclear LLC would not constitute a direct transfer of the licenses to the extent held by ENO. Therefore, no consent to the proposed conversion is necessary.

The findings set forth above are supported by the NRC's safety evaluation dated July 28, 2008.

III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, IT IS HEREBY ORDERED that the application regarding the indirect license transfer discussed above related to the proposed corporate restructuring and establishment of Enexus is approved, subject to the following conditions:

1. EN-Vermont Yankee shall enter into the $700 million Support Agreement with Enexus Energy Corporation as described in the application, no later than the time the proposed transactions and indirect license transfer occurs. EN-Vermont Yankee shall take no action to cause Enexus Energy Corporation, or its successors and assigns, to void, cancel, or modify the Support Agreement or cause it to fail to perform, or impair its performance under the Support Agreement, without prior written consent of the NRC. The Support Agreement may not be amended or modified without 30 days prior written notice to the Director of the Office of Nuclear Reactor Regulation or his designee. An executed copy of the Support Agreement shall be submitted to the NRC no later than 30 days after the completion of the proposed transactions and the indirect license transfer. EN-Vermont Yankee shall inform the NRC in writing anytime it draws upon the Support Agreement.

2. The ten separate support guarantees from various Entergy subsidiaries, which total $315 million, including the support guarantee relating to Vermont Yankee, may be revoked when, and conditioned upon, implementation of the new $700 million Support Agreement at the time the proposed restructuring and indirect license transfer are completed.

3. Should the proposed corporate restructuring and establishment of Enexus not be completed within one year from the date of this Order, this Order shall become null and void, provided, however, upon written application and good cause shown, such date may be extended by Order.

This Order is effective upon issuance.

For further details with respect to this Order, see the application dated July 30, 2007, as supplemented by letters dated October 31, and December 5, 2007, and January 24, March 17, April 22, and May 2, 2008, and the NRC's safety evaluation dated July 28, 2008, which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland and accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland this 28th day of July 2008.

For the Nuclear Regulatory Commission.

Timothy J. McGinty,

Acting Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E8–17678 Filed 7–31–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–155 and 72–43]

In the Matter of Entergy Nuclear Operations, Inc.; Entergy Nuclear Palisades, LLC (Big Rock Point); Order Approving Indirect Transfer of Facility Operating License

I

Entergy Nuclear Operations, Inc. (ENO) and Entergy Nuclear Palisades, LLC (EN-Palisades) are co-holders of the Facility Operating License, No. DPR–06, which authorizes the possession, use, and operation of Big Rock Point. Big Rock Point is an independent spent fuel storage installation (ISFSI) that is owned by EN-Palisades and operated by ENO. The facility is located in Charlevoix County, Michigan.

II

By application dated July 30, 2007, as supplemented by letters dated October 31, and December 5, 2007, and January 24, March 17, April 22, and May 2, 2008, ENO, acting on behalf of itself and EN-Palisades, requested that the U.S. Nuclear Regulatory Commission (NRC, the Commission), pursuant to Section 50.80 of Title 10 of the Code of Federal Regulations (10 CFR), consent to the proposed indirect transfer of control of the Big Rock Point license, including the general license for the ISFSI.

EN-Palisades is currently a direct wholly owned subsidiary of Entergy Nuclear Midwest Investment Company, LLC which, in turn, is a direct wholly owned subsidiary of Entergy Nuclear Holding Company which, in turn, is a direct wholly owned subsidiary of Entergy Corporation. Therefore, under the current corporate structure, Entergy

Corporation is the indirect owner of 100 percent of EN-Palisades.

Under the proposed corporate restructuring, a new holding company, Enexus Energy Corporation (Enexus), will be created. Initially, the shareholders of Entergy Corporation will separately own the shares of Enexus and, as such, Enexus will be owned by the public. Entergy Nuclear Holding Company will become a direct wholly owned subsidiary of Enexus. Accordingly, following the corporate restructuring, Enexus will acquire indirect control of 100 percent of EN-Palisades.

ENO, the operator of the Big Rock Point facility, is currently a direct wholly owned subsidiary of Entergy Nuclear Holding Company #2 which, in turn, is a direct wholly owned subsidiary of Entergy Corporation. Therefore, Entergy Corporation is currently the indirect owner of 100 percent of ENO.

Under the proposed corporate restructuring, Entergy Nuclear Holding Company #2 will be eliminated and ENO will become a direct subsidiary of a new parent company called EquaGen, LLC. EquaGen, LLC will be owned in equal shares by two new intermediate holding companies as follows. Entergy EquaGen, Inc. is being created as a direct subsidiary of Entergy Corporation and will own 50 percent of EquaGen, LLC. Similarly, Enexus EquaGen, LLC is being created as a direct subsidiary of Enexus and will also own 50 percent of EquaGen, LLC. Accordingly, following the corporate restructuring, Entergy Corporation and Enexus will each have indirect control of 50 percent of ENO.

Finally, ENO will be converted from a corporation to a limited liability company and its name will be changed from Entergy Nuclear Operations, Inc. to EquaGen Nuclear, LLC. Under Delaware law, EquaGen Nuclear, LLC will assume all of the rights and responsibilities of ENO, and it will be the same company (legal entity) both before and after the conversion and name change. Also, EN-Palisades will undergo a name change to become Enexus Nuclear Palisades, LLC. The staff understands that ENO will request an administrative license amendment to conform the Big Rock Point license in the near future.

Notice of the request for approval and an opportunity for a hearing was published in the **Federal Register** on January 16, 2008 (73 FR 2956). By petition dated February 5, 2008, Locals 369 and 590, Utility Workers Union of America (UWUA), American Federation of Labor-Congress of Industrial Organization, representing plant workers at the Pilgrim Nuclear Power Station located in Plymouth, Massachusetts, responded to the **Federal Register** notice and requested a hearing and leave to intervene as a party in the Big Rock Point proceeding. On June 12, 2008, Local 369 filed a notice of withdrawal of its petition to intervene. The notice of withdrawal did not apply to Local 590.

The request for a hearing is currently pending before the Commission. Pursuant to 10 CFR 2.1316, during the pendency of a hearing, the staff is expected to promptly proceed with the approval or denial of license transfer requests consistent with the staff's findings in its safety evaluation. Notice of the staff's action shall be promptly transmitted to the presiding officer and parties to the proceeding. Commission action on the pending hearing requests is being handled independently of this action.

Also, an intervenor from Oswego, New York, submitted two letters to the Commission with public comments dated January 21, 2008. The public comments are addressed by the NRC's safety evaluation dated July 28, 2008.

Pursuant to 10 CFR 50.80(a), no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application as supplemented and other information before the Commission, and relying upon the representations and agreements in the application as supplemented, the NRC staff concludes that the proposed indirect transfer of control of the license held by EN-Palisades to Enexus, as described herein, will not affect the qualifications of EN-Palisades as holder of the Big Rock Point license. The indirect transfer of control of the license is otherwise consistent with applicable provisions of law, regulations, and orders issued by the NRC. Furthermore, the NRC staff concludes that the proposed corporate restructuring involving new intermediate and ultimate parent companies over ENO, as described herein, will not affect the qualifications of ENO as holder of the Big Rock Point license. The indirect transfer of control of the license as held by ENO, to the extent affected by the proposed restructuring, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission.

The NRC staff concludes that the conversion of Entergy Nuclear Operations, Inc. to EquaGen Nuclear, LLC would not constitute a direct transfer of the licenses to the extent held by ENO. Therefore, no consent to the proposed conversion is necessary.

The findings set forth above are supported by the NRC's safety evaluation dated July 28, 2008.

III.

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, IT IS HEREBY ORDERED that the application regarding the indirect license transfer discussed above related to the proposed corporate restructuring and establishment of Enexus is approved, subject to the following conditions:

1. EN-Palisades shall enter into the $700 million Support Agreement with Enexus Energy Corporation as described in the application, no later than the time the proposed transactions and indirect license transfer occurs. EN-Palisades shall take no action to cause Enexus Energy Corporation, or its successors and assigns, to void, cancel, or modify the Support Agreement or cause it to fail to perform, or impair its performance under the Support Agreement, without prior written consent of the NRC. The Support Agreement may not be amended or modified without 30 days prior written notice to the Director of the Office of Nuclear Material Safety and Safeguards or his designee. An executed copy of the Support Agreement shall be submitted to the NRC no later than 30 days after the completion of the proposed transactions and the indirect license transfer. EN-Palisades shall inform the NRC in writing anytime it draws upon the Support Agreement.

2. The ten separate support guarantees from various Entergy subsidiaries, which total $315 million, including the support guarantee relating to Big Rock Point, may be revoked when, and conditioned upon, implementation of the new $700 million Support Agreement at the time the proposed restructuring and indirect license transfer are completed.

3. The Parent Company Guarantee may be terminated when, and conditioned upon, replacement with an alternative financial assurance mechanism that is acceptable under the terms of 10 CFR 50.75(e)(1) at the time the proposed restructuring and indirect license transfer are completed.

4. Should the proposed corporate restructuring and establishment of Enexus not be completed within one year from the date of this Order, this Order shall become null and void, provided, however, upon written

application and good cause shown, such date may be extended by Order.

This Order is effective upon issuance.

For further details with respect to this Order, see the application dated July 30, 2007, as supplemented by letters dated October 31, and December 5, 2007, and January 24, March 17, April 22, and May 2, 2008, and the NRC's safety evaluation dated July 28, 2008, which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 28th day of July 2008.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E8–17687 Filed 7–31–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–333 and 72–12]

In the Matter of Entergy Nuclear Operations, Inc.; Entergy Nuclear Fitzpatrick, LLC (James A. FitzPatrick Nuclear Power Plant); Order Approving Indirect Transfer of Facility Operating License

I

Entergy Nuclear Operations, Inc. (ENO) and Entergy Nuclear FitzPatrick, LLC (EN-FitzPatrick) are co-holders of the Facility Operating License, No. DPR–59, which authorizes the possession, use, and operation of the James A. FitzPatrick Nuclear Power Plant (FitzPatrick). FitzPatrick is a boiling water nuclear reactor that is owned by EN-FitzPatrick and operated by ENO. The facility is located in Scriba, Oswego County, New York.

II

By application dated July 30, 2007, as supplemented by letters dated October 31, and December 5, 2007, and January 24, March 17, April 22, and May 2, 2008, ENO, acting on behalf of itself and EN-FitzPatrick, requested that the U.S. Nuclear Regulatory Commission (NRC, the Commission), pursuant to Section 50.80 of Title 10 of the *Code of Federal Regulations* (10 CFR), consent to the proposed indirect transfer of control of the FitzPatrick license, including the general license for the independent spent fuel storage installation.

EN-FitzPatrick is currently a direct wholly owned subsidiary of Entergy Nuclear New York Investment Company 1 which, in turn, is a direct wholly owned subsidiary of Entergy Nuclear Holding Company #1. Seventy-five percent of Entergy Nuclear Holding Company #1 is directly owned by Entergy Corporation while the remaining 25 percent is directly owned by Entergy Global, LLC. Entergy Global, LLC is a direct wholly owned subsidiary of Entergy International Holdings LTD which, in turn, is a direct wholly owned subsidiary of Entergy Corporation. Therefore, under the current corporate structure, Entergy Corporation is the indirect owner of 100 percent of EN-FitzPatrick.

Under the proposed corporate restructuring, a new holding company, Enexus Energy Corporation (Enexus), will be created. Initially, the shareholders of Entergy Corporation will separately own the shares of Enexus and, as such, Enexus will be owned by the public. Entergy Nuclear Holding Company #1 will become a direct wholly owned subsidiary of Enexus. Entergy Global, LLC, Entergy International Holdings LTD, and Entergy Nuclear New York Investment Company 1 will be eliminated. Accordingly, following the corporate restructuring, Enexus will acquire indirect control of 100 percent of EN-FitzPatrick.

ENO, the operator of the FitzPatrick facility, is currently a direct wholly owned subsidiary of Entergy Nuclear Holding Company #2 which, in turn, is a direct wholly owned subsidiary of Entergy Corporation. Therefore, Entergy Corporation is currently the indirect owner of 100 percent of ENO.

Under the proposed corporate restructuring, Entergy Nuclear Holding Company #2 will be eliminated and ENO will become a direct subsidiary of a new parent company called EquaGen, LLC. EquaGen, LLC will be owned in equal shares by two new intermediate holding companies as follows. Entergy EquaGen, Inc. is being created as a direct subsidiary of Entergy Corporation and will own 50 percent of EquaGen, LLC. Similarly, Enexus EquaGen, LLC is being created as a direct subsidiary of Enexus and will also own 50 percent of EquaGen, LLC. Accordingly, following the corporate restructuring, Entergy Corporation and Enexus will each have indirect control of 50 percent of ENO.

Finally, ENO will be converted from a corporation to a limited liability company and its name will be changed from Entergy Nuclear Operations, Inc. to EquaGen Nuclear, LLC. Under Delaware law, EquaGen Nuclear, LLC will assume all of the rights and responsibilities of ENO, and it will be the same company (legal entity) both before and after the conversion and name change. Also, EN-FitzPatrick will undergo a name change to become Enexus Nuclear FitzPatrick, LLC. The staff understands that ENO will request an administrative license amendment to conform the FitzPatrick license in the near future.

Notice of the requests for approval and an opportunity for a hearing was published in the **Federal Register** on January 16, 2008 (73 FR 2950). By petition dated February 5, 2008, Locals 369 and 590, Utility Workers Union of America (UWUA), American Federation of Labor-Congress of Industrial Organization, representing plant workers at the Pilgrim Nuclear Power Station located in Plymouth, Massachusetts, responded to the **Federal Register** notice and requested a hearing and leave to intervene as a party in the FitzPatrick proceeding. On June 12, 2008, Local 369 filed a notice of withdrawal of its petition to intervene. The notice of withdrawal did not apply to Local 590.

The request for a hearing is currently pending before the Commission. Pursuant to 10 CFR 2.1316, during the pendency of a hearing, the staff is expected to promptly proceed with the approval or denial of license transfer requests consistent with the staff's findings in its safety evaluation. Notice of the staff's action shall be promptly transmitted to the presiding officer and parties to the proceeding. Commission action on the pending hearing requests is being handled independently of this action.

Pursuant to 10 CFR 50.80(a), no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. Upon review of the information in the application as supplemented and other information before the Commission, and relying upon the representations and agreements in the application as supplemented, the NRC staff concludes that the proposed indirect transfer of control of the license held by EN-FitzPatrick to Enexus, as described

herein, will not affect the qualifications of EN-FitzPatrick as holder of the FitzPatrick license. The indirect transfer of control of the license is otherwise consistent with applicable provisions of law, regulations, and orders issued by the NRC. Furthermore, the NRC staff concludes that the proposed corporate restructuring involving new intermediate and ultimate parent companies over ENO, as described herein, will not affect the qualifications of ENO as holder of the FitzPatrick license. The indirect transfer of control of the license as held by ENO, to the extent affected by the proposed restructuring, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission.

The NRC staff concludes that the conversion of Entergy Nuclear Operations, Inc. to EquaGen Nuclear, LLC would not constitute a direct transfer of the licenses to the extent held by ENO. Therefore, no consent to the proposed conversion is necessary.

The findings set forth above are supported by the NRC's safety evaluation dated July 28, 2008.

III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *It is hereby ordered* that the application regarding the indirect license transfer discussed above related to the proposed corporate restructuring and establishment of Enexus is approved, subject to the following conditions:

(1) EN-FitzPatrick shall enter into the $700 million Support Agreement with Enexus Energy Corporation as described in the application, no later than the time the proposed transactions and indirect license transfer occurs. EN-FitzPatrick shall take no action to cause Enexus Energy Corporation, or its successors and assigns, to void, cancel, or modify the Support Agreement or cause it to fail to perform, or impair its performance under the Support Agreement, without prior written consent of the NRC. The Support Agreement may not be amended or modified without 30 days prior written notice to the Director of the Office of Nuclear Reactor Regulation or his designee. An executed copy of the Support Agreement shall be submitted to the NRC no later than 30 days after the completion of the proposed transactions and the indirect license transfer. EN-FitzPatrick shall inform the NRC in writing anytime it draws upon the Support Agreement.

(2) The ten separate support guarantees from various Entergy subsidiaries, which total $315 million, including the support guarantee relating to FitzPatrick, may be revoked when, and conditioned upon, implementation of the new $700 million Support Agreement at the time the proposed restructuring and indirect license transfer are completed.

(3) Should the proposed corporate restructuring and establishment of Enexus not be completed within one year from the date of this Order, this Order shall become null and void, provided, however, upon written application and good cause shown, such date may be extended by Order.

This Order is effective upon issuance.

For further details with respect to this Order, see the application dated July 30, 2007, as supplemented by letters dated October 31, and December 5, 2007, and January 24, March 17, April 22, and May 2, 2008, and the NRC's safety evaluation dated July 28, 2008, which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland and accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail at *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 28th day of July 2008.

For the Nuclear Regulatory Commission.

Timothy J. McGinty,

Acting Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E8–17689 Filed 7–31–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–27]

Notice of Receipt of an Application To Transfer the Control of Special Nuclear Materials License No. SNM–42; Opportunity To Request a Hearing, and Provide Written Comments

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt of license transfer application and opportunity to request a hearing.

DATES: A request for a hearing must be filed by August 21, 2008, in accordance with 10 CFR 2.309(b)(1).

FOR FURTHER INFORMATION CONTACT: Amy M. Snyder, Senior Project Manager, Fuel Manufacturing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop EBB2C40M, Washington, DC 20555–0001, Telephone: (301) 492–3225; fax number: (301) 492–5539; e-mail: *amy.synder@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

By letters dated November 14 and December 10, 2007, January 7 (two letters), January 11, February 15, and February 29, 2008, and e-mails dated December 12 (three e-mails) and December 13, 2007 (two e-mails), and January 9, and January 14, 2008 (collectively the Application), BWX Technologies, Inc., Nuclear Products Division (BWXT or the licensee) requested approval, by the U.S. Nuclear Regulatory Commission (NRC or the Commission), of the transfer of Special Nuclear Materials License No. SNM–42 to Babcock & Wilcox Nuclear Operations Group, Inc. *(B&W NOG).* B&W NOG is a Delaware Corporation that was created on November 20, 2007, as a wholly-owned subsidiary of Babcock & Wilcox Investment Company, Inc. The requested transfer action would result in a transfer of control of Special Nuclear Materials License No. SNM–42 from BWXT to B&W NOG.

BWXT is the holder of Special Nuclear Materials License No. SNM–42, which authorizes BWXT to receive, possess, and use special nuclear material and irradiated fuel (spent nuclear fuel) for the research, fabrication and assembly of nuclear fuel and related components at its facilities located in the Lynchburg, Virginia area. The license provides, among other things, that the facilities are subject to all rules, regulations, and orders of the NRC, now or hereafter in effect. Special Nuclear Materials License No. SNM–42 applies to the BWXT fuel manufacturing facilities, the research facility known as the Lynchburg Technology Center (LTC), the waste treatment facility, and the uranium storage facilities located in Campbell County, Virginia.

Pursuant to 10 CFR 2.1301, the Commission is noticing in the **Federal Register** the receipt of the Application

for approval of the transfer of Special Nuclear Materials License No. SNM–42 because it involves a major fuel cycle facility licensed under 10 CFR part 70. The NRC is considering the issuance of an order pursuant to 10 CFR 70.36, authorizing the transfer of control of Special Nuclear Materials License No. SNM–42 from BWXT to B&W NOG. An amendment to the existing license would follow the issuance of the order. According to the BWXT Application, a newly formed entity, namely B&W NOG, would acquire ownership of the BWXT Virginia facilities and upon approval of the license transfer would be the licensee responsible for operating and maintaining them. The Application does not propose any physical changes to the facilities or other changes.

The amendment would replace references to BWXT, Inc., in the license, with references to B&W NOG, to reflect the transfer, if approved by the Commission.

Pursuant to 10 CFR 70.36, no license, or any right thereunder, shall be transferred, assigned in any manner, disposed of, either voluntarily or involuntarily, directly or indirectly, through the transfer of control of the license, to any person, unless the Commission, after securing full information, finds that the transfer is in accordance with the provisions of the Atomic Energy Act of 1954, as amended, and gives its consent in writing. The Commission will approve an application for the transfer of a license and authorize the transfer of the license through the issuance of an order, if it is determined that the proposed transferee is qualified to hold the license and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

An NRC administrative review, documented in a letter to BWXT dated March 19, 2008, found the application acceptable to begin a technical review. If the NRC issues an order, as described above, the approval of the above requested actions will be documented in a conforming amendment to Special Nuclear Materials License No. SNM–42. However, before issuing an order and approving the amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC regulations. These findings will be documented in a safety evaluation report. The license transfer request falls within the 10 CFR 51.22(c)(21), categorical exclusion so no environmental review of the proposed action is required.

II. Opportunity To Request a Hearing

The NRC hereby provides notice that this is a proceeding regarding the consideration of the issuance of an order authorizing the transfer of control of Special Nuclear Materials License No. SNM–42. In accordance with the general requirements in Subpart C of 10 CFR part 2, as amended on January 14, 2004 (69 FR 2182), any person whose interest may be affected by this proceeding and who desires to participate as a party must file a written request for a hearing and a specification of the contentions that the person seeks to have litigated in the hearing.

A request for hearing or a petition for leave to intervene must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated on August 28, 2007 (72 FR 49139). The E-Filing rule requires participants to submit and serve documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of the E-Filing rule, at least ten (10) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV,* or by calling (301) 415–1677, to request: (1) A digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) the creation of an electronic docket for the proceeding [even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate]. Each petitioner/ requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Instruction for applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a petitioner/requestor has obtained a digital ID certificate, has created a docket, and downloads the EIE viewer, he or she can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF), in accordance with NRC guidance that is available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. eastern time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document, to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents to each participant separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., eastern time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing, requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, Rockville, Pike, Rockville, MD, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document to all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board

that the petition and/or request should be granted and/or the contentions should be admitted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filings must be submitted no later than 11:59 p.m. eastern time on the due date. Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order by the Commission, an Atomic Safety and Licensing Board, or a presiding officer. Participants are requested not to include social security numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

The formal requirements for documents contained in 10 CFR 2.304(c)–(e) must be met. If the NRC grants an electronic document exemption in accordance with 10 CFR 2.302(g)(3), then the requirements for paper documents, set forth in 10 CFR 2.304(b) must be met.

In addition to meeting other applicable requirements of 10 CFR 2.309, the general requirements involving a request for a hearing filed by a person other than an applicant must state:

1. The name, address, and telephone number of the requester;

2. The nature of the requester's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding;

3. The nature and extent of the requester's property, financial or other interest in the proceeding;

4. The possible effect of any decision or order that may be issued in the proceeding in the requester's interest; and

5. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.309(b).

In accordance with 10 CFR 2.309(f)(1), a request for hearing or petitions for leave to intervene must set forth, with particularity, the contentions sought to be raised. For each contention, the request or petition must:

1. Provide a specific statement of the issue of law or fact to be raised or controverted;

2. Provide a brief explanation of the basis for the contention;

3. Demonstrate that the issue raised in the contention is within the scope of the proceeding;

4. Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceeding;

5. Provide a concise statement of the alleged facts or expert opinions that support the requester's/petitioner's position on the issue and on which the requester/petitioner intends to rely to support its position on the issue; and

6. Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This information must include references to specific portions of the Application that the requester/petitioner disputes and the supporting reasons for each dispute, or, if the requester/petitioner believes the Application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requester's/petitioner's belief.

In addition, in accordance with 10 CFR 2.309(f)(2), contentions must be based on documents or other information available at the time the petition is to be filed, such as the Application, or other supporting documents filed by the licensee or otherwise available to the petitioner. Contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer.

Requesters/petitioners should, when possible, consult with each other in preparing contentions and combine similar subject matter concerns into a joint contention, for which one of the co-sponsoring requesters/petitioners is designated the lead representative. Further, in accordance with 10 CFR 2.309(f)(3), any requester/petitioner that wishes to adopt a contention proposed by another requester/petitioner must do so, in accordance with the E-Filing rule, within ten (10) days of the date the contention is filed, and designate a representative who shall have the authority to act for the requester/petitioner.

III. Written Comments

In accordance with 10 CFR 2.1305(a), as an alternative to requests for hearings and petitions to intervene, persons may submit written comments regarding the license transfer application. These comments must be submitted by September 2, 2008, in accordance with 10 CFR 2.1305(b). The Commission will address the comments received in accordance with 10 CFR 2.1305(c). Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice. Comments received after 30 days will be considered if practicable to do so, but only the comments received on or before the due date can be assured consideration.

IV. Further Information

Documents related to this action including the Application for the proposed license transfer and supporting documentation, are available electronically through the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the publicly available documents related to this notice are:

Document	ADAMS Accession No.
November 14, 2007: Initial Application	ML080920759
December 7, 2007: RAI Request I	ML073340643
December 10, 2007: RAI Response I	ML073460400
December 17, 2007: Meeting Minutes	ML080090688
January 7, 2008: Application Supplement	ML080160257
January 7, 2008: Application Supplement	ML080160149
January 11, 2008: Application Supplement	ML080230599
February 1, 2008: RAI Request II	ML080280551
February 1, 2008: Proprietary Determination I	ML080150394
February 15, 2008: RAI Response II	ML080920674
February 29, 2008: Response to Proprietary Determination	ML080640268
March 19, 2008: Application Acceptance	ML080710555
March 31, 2008: Proprietary Determination II	ML080790072
April 24, 2008: RAI Request III	ML081050308

Application Supplements via E-Mails	ADAMS Accession No.
December 12, 2007	ML081190572
December 12, 2007	ML081190669
December 12, 2007	ML081190672
December 13, 2007	ML081190671
December 13, 2007	ML081190670
January 9, 2008	ML081190624
January 14, 2008	ML081190661

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact

the NRC Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 17 day of July, 2008,

For the Nuclear Regulatory Commission.

Peter Habighorst,

Chief, Fuel Manufacturing Branch, Fuel Facilities Licensing Directorate, Division of Fuel Cycle Safety, and Safeguards, Office of Nuclear Materials Safety and Safeguards.

[FR Doc. E8–17666 Filed 7–31–08; 8:45 am]

BILLING CODE 7590–01–P

PRESIDIO TRUST

Notice Extending Prescribed Comment Period

AGENCY: The Presidio Trust.

ACTION: Notice extending prescribed comment period.

SUMMARY: By **Federal Register** notice of June 13, 2008 (73 FR 33814), the Environmental Protection Agency calculated the 45-day time period for public review of the Draft Supplemental Environmental Impact Statement (SEIS). The deadline for comments was July 31, 2008. By this notice, the Presidio Trust (Trust) is extending the public comment period to September 19, 2008. Although the time for comments has been extended, the Trust requests that interested parties provide comments as soon as possible.

DATES: Written comments should be submitted on or before September 19, 2008.

ADDRESSES: Written comments may be submitted to Main Post, Attn: Compliance Manager, The Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052. Electronic comments can be sent to *Mainpost@Presidiotrust.gov*. Please be aware that all comments and information submitted will be made available to the public, including, without limitation, any postal address, e-mail address, phone number, or other information contained in each submission.

SUPPLEMENTARY INFORMATION: In accordance with the National Environmental Policy Act, the Trust is requesting public comment on the Presidio Trust Management Plan (PTMP) Main Post Update Draft SEIS. The Draft SEIS evaluates alternatives to the planning concept for the 120-acre Main Post district at the Presidio of San Francisco identified in the 2002 PTMP, the Trust's comprehensive land use plan and policy framework. The Draft SEIS considers planning proposals that were not anticipated in the PTMP, including a contemporary art museum and a lodge, and identifies Alternative 2 as the proposed action, which is further described in the PTMP Main Post Update.

Interested parties have requested that the Trust extend the public comment period. By extending the comment period, the Trust anticipates more in-depth comments on the Draft SEIS, which will promote a better-informed decision on the proposed action. The PTMP Main Post Update and Draft SEIS can be reviewed at local libraries and the Trust headquarters at the address given above, and on the Trust Web site at *http://www.Presidio.gov* in the Major Projects section.

Karen Cook, General Counsel, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, California 94129–0052, Telephone: 415–561–5300.

Dated: July 28, 2008.

Karen A. Cook,

General Counsel.

[FR Doc. E8–17653 Filed 7–31–08; 8:45 am]

BILLING CODE 4310–4R–P

DEPARTMENT OF TRANSPORTATION

[Docket No. DOT–OST–2008–0182]

Office of Small and Disadvantaged Business Utilization (OSDBU); Notice of Request for Renewal of Data Collection by the Office of Small and Disadvantaged Business Utilization's (OSDBU) Regional Small Business Transportation Resource Centers (SBTRCs); Agency Information Collection Activities; Request for Comments, Renewal and Approval of Information Collection(s): Regional Center Intake Form (DOT F 4500) and Regional Resource Center Monthly Report Form (DOT F 4502)

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: The Office of Small and Disadvantaged Business Utilization (OSDBU) invites the public to comment about our intention to request the Office of Management and Budget's (OMB) approval to renew information collection forms, associated with OSDBU. The collection involves the use of the Regional Center Intake Form, (DOT F 4500) which documents the type of assistance provided to each small business that is enrolled in the program.

The use of the Regional Resource Center Monthly Report Form, (DOT F 4502) will highlight activities, such as counseling, marketing, meetings/conferences, and services to businesses as completed during the month. The information will be used to ascertain whether the program is providing services to its constituency, the small business community, in a fair and equitable manner. The information collected is necessary to determine whether small businesses are participating in DOT funded and DOT assisted opportunities with the DOT.

The Counseling Information Form, (DOT F 4640.1) has been eliminated and the information contained in that form is now consolidated into the Regional Resource Center Monthly Report Form (formerly titled Monthly Report of Operations Form). To eliminate duplication and to streamline the data collection process, OSDBU revised the Monthly Report of Operations Form into the Regional Resource Center Monthly Report Form.

We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995. On June 26, 2008, OSDBU published a 60-day notice in the **Federal Register** (73 FR 36368) Docket #OST–2008–0182, informing the public of OSDBU's intention to extend an approved information collection.

DATES: Written comments should be submitted by: September 2, 2008 and submitted to the attention of the DOT/OST Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Docket library, Room 10102, 725 17th Street, NW., Washington, DC 20503 or *oira_submission @omb.eop.gov (e-mail).*

FOR FURTHER INFORMATION CONTACT: Arthur D. Jackson, 202–366–5344 Office of Small and Disadvantaged Business Utilization, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W56 462, Washington, DC 20590. Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: U.S. Department of Transportation, Office of Small and Disadvantaged Business Utilization (OSDBU)

OMB Control No: 2105–0554; Form No.: DOT F 4500, Regional Center Intake Form and Form No.: DOT F 4502, Regional Resource Center Monthly Report Form.

Affected Public: Representatives of DOT Regional Small Business Transportation Resource Centers and the Small Businesses community on a national basis.

Type of Review: Clearance and Renewal.

Abstract: In accordance with Public Law 95–507, an amendment to the Small Business Act and the Small Business Investment Act of 1953, OSDBU is responsible for the implementation and execution of the Department of Transportation (DOT) activities on behalf of small businesses, in accordance with Section 8, 15 and 31 of the Small Business Act (SBA), as amended. The Office of Small and Disadvantaged Business Utilization also administers the provisions of Title 49, of the United States Code, Section 332, the Minority Resource Center (MRC) which includes the duties of advocacy, outreach and financial services on behalf of small and disadvantaged business businesses and those certified under CFR 49 parts 23 and or 26 as Disadvantaged Business Enterprises (DBE).The Small Business Transportation Resource Regional Centers will collect information on small businesses, which includes Disadvantaged Business Enterprise (DBE), Women-Owned Small Business (WOB), Small Disadvantaged Business (SDB), 8(a), Service Disabled Veteran Owned Business (SDVOB), Veteran Owned Small Business (VOSB), HubZone, and types of services they seek from the SBTRCs. Services and responsibilities of the SBTRCs include business analysis, general management & technical assistance and training, business counseling, outreach services/ conference participation, short-term loan assistance. The cumulative data collected will be analyzed by the OSDBU to determine the effectiveness of services provided, including counseling, outreach, and financial services. Such data will also be analyzed by the OSDBU to determine agency effectiveness in assisting small businesses to enhance their opportunities to participate in government contracts and subcontracts.

The Regional Center Intake Form, (DOT F 4500) is used by the Regional SBTRC staff to enroll small business clients into the program in order to create a viable database of firms that can participate in government contracts and subcontracts, especially those projects that are transportation related. In addition, each enrolled small business will be assigned a client number that can track the firm's involvement in the services offered by the SBTRCs. Each area on the form must be filled in electronically by the SBTRCs and retained in secured files of the client. The completion of the form is used as a tool for making decisions about the needs of the business, such as; referral to technical assistance agencies for help, identifying the type of profession or trade of the business, the type of certification that the business holds, length of time in business, and location of the firm. The SBTRCs must complete an Intake Form and retain copies in secured files in their offices. A limited amount of privacy information is requested on this form. We have informed the public that the Privacy Act is stated on the form. Under the Privacy Act (5 U.S.C. 552) any person can request to see or get copies of any personal information that DOT has in his or her file, when that file is retrievable by individual identifiers, such as name or social security numbers. Request for information about another party may be denied unless DOT has the written permission of the individual to release the information to the requestor or unless the information is subject to disclosure under the Freedom of Information Act. This can assist the SBTRCs in developing a business plan or adjusting their business plan to increase its ability to market its goods and services to buyers and potential users of their services.

Respondents: Small Business Transportation Resource Centers.

Estimated Number of Respondents: 100.

Frequency: The information will be collected monthly.

Estimated Total Burden on Respondents: 600 hours.

The Regional Resource Center Monthly Report Form (DOT F 4502) for each SBTRC must submit a monthly status report of business activities conducted during the 30 day time frame. The form is used to capture activities and accomplishments that were made by the Regional SBTRCs during the course of the month. In addition, the form includes a data collection section where numbers and hours are reported and a section that is assigned for a written narrative that provides back up that supports the data.

Activities to be reported are (1) Counseling Activity which identifies the counseling hours provided to businesses, number of new appointments, and follow-up on counseled clients. (2) Activity for Businesses Served identifies the type of small business that is helped, such as a DBE, 8(a), WOB, HubZone, SDB, SDVOB, or VOSB. 3) Marketing Activity includes the name of an event attended by the SBTRC and the role played when participating in a conference, workshop or any other venue that relates to small businesses. (4) Meetings that are held with government representatives in the region, or at the state level, are an activity that is reported. (5) Events Hosted by the SBTRCs, such as small business workshops, financial assistance workshops, matchmaking events, are activities that are reported on a monthly basis.

Respondents: Small Business Transportation Resource Centers.

Estimated Number of Respondents: 100.

Frequency: The information will be collected monthly.

Estimated Total Burden on Respondents: 1200 hours.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Departments estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information collection; and (d) ways to minimize the burden of the collection of information on respondents, by the use of electronic means, including the use of automated collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Issued in Washington, DC on July 25, 2008.

Patricia Lawton,

DOT Clearance Officer, Office of the Chief Information Officer.

[FR Doc. E8–17671 Filed 7–31–08; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Ninth Meeting: Special Committee 209, ATCRBS/Mode S Transponder MOPS Maintenance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 209, EUROCAE WG–49 Joint Plenary Session ATCRBS/Mode S Transponder MOPS Maintenance.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 209, ATCRBS/ Mode S Transponder MOPS Maintenance.

DATES: The meeting will be held August 20–21, 2008, from 9 a.m.–5 p.m.

ADDRESSES: RTCA Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036–5133; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org;* (2) Secretary Contact: Gary Furr; telephone (609) 485–4254, e-mail *gary.ctr.furr@faa.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 209 meeting. The agenda will include:

August 20–21:

- Co-Chairs, Welcome, Introductions and Remarks.
- Review and Approval of the Agenda (SC209–WP09–01).
- Review and Approval of the Minutes from SC–209; Plenary Meeting #8 (SC209 WP09–02).
- Closing Plenary Session (Date, Place and Time of Future Meetings, Discussion of Agenda topic for Next Meeting(s), Other Business, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, July 23, 2008.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. E8–17561 Filed 7–31–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2007–34]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before August 21, 2008.

ADDRESSES: You may send comments identified by Docket Number FAA–2008–0582 using any of the following methods:

- *Government-wide Rulemaking Web Site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC., between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Katrina Holiday (202) 267–3603 or Frances Shaver (202) 267–9681, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on July 28, 2008.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2008–0582.

Petitioner: U.S. Avionix.

Section of 14 CFR Affected: 43.3(j)(2).

Description of Relief Sought: U.S. Avionix requests relief from the maintenance, preventive maintenance, rebuilding, and alteration requirements contained in § 43.3(j)(2) to alter, repair, and supply any parts for instruments not manufactured by it using its Parts Manufacturer Approval and Technical Standard Order Authorization.

[FR Doc. E8–17593 Filed 7–31–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2008–0112]

Agency Information Collection Activities: Notice of Request for Renewal of a Previously Approved Information Collection

AGENCY: Office of the Secretary (OST).

ACTION: Notice and request for comments.

SUMMARY: The OST invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for renewal of a previously approved information collection that is summarized below under **SUPPLEMENTARY INFORMATION**. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on May 22, 2008. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by September 2, 2008.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FHWA–2008–0112 by any of the following methods: *Web Site: http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site. *Fax:* 1–202–493–2251. *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. *Docket:* For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Jon Obenberger, 202–366–2221, Office of Infrastructure, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 8 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Utility Adjustments, Agreements, Eligibility Statements and Accommodation Policies.

OMB Control #: 2125–0519.

Background: Federal laws dealing with the relocation and accommodation of utility facilities associated with the right-of-way of highway facilities are contained in the United States Code (U.S.C.) 23, Sections 123 and 109(I)(1). Regulations dealing with the utility facility accommodation and relocation are based upon the laws contained in 23 U.S.C. and are found in the Code of Federal Regulations (CFR), Title 23, Chapter I, Subchapter G, Part 645, subparts A and B.

The FHWA requires (23 CFR part 645 subpart A—Utility Relocations, Adjustments, and Reimbursement) developing and recording costs for utility adjustments, as the basis for reimbursing State Departments of Transportation (SDOT's) and local agency transportation departments, when they have paid the costs of utility facilities relocations that were required by the construction of Federal-aid highway projects. The FHWA requires the utility companies to document the costs or expenses for adjusting their facilities. These utility companies must have a system for recording labor, materials, supplies and equipment costs incurred when undertaking adjustments to accommodate the highway projects. This record of costs forms the basis for payment by the SDOT or local transportation department to the utility company. In turn the FHWA reimburses the SDOT or local transportation department for its payment to the utility company. The utility company is required to maintain these records of costs for 3 years after final payment is received.

The SDOT and/or local agency transportation departments are responsible for maintaining the highway rights-of-way, including the control of its use by the utility companies. In managing the use of the highway rights-of-way, the SDOT and/or local agency transportation department is required (23 CFR 645.205 and 23 CFR 645.213) to document the terms under which utility facilities are allowed to cross or otherwise occupy the highway rights-of-way, in the form of utility use and occupancy agreements (formerly OMB Control #: 2125–0522) with each utility company. This documentation, consisting of a use and occupancy agreement (permit), must be in writing and must be maintained in the SDOT and/or local agency transportation department.

Each SDOT's is required (23 CFR 615.215) to submit to the FHWA a utility adjustment eligibility statement (formerly OMB Control #: 2125–0515) that establishes the SDOT's legal authority and policies it employs for accommodating utilities within highway right-of-ways or obligation to pay for utility adjustments. FHWA has previously reviewed and approved these eligibility statements for each State DOT. The statements are used as a basis for Federal-aid reimbursement in utility relocation costs under the provisions of 23 U.S.C. 123. Updated statements may be submitted for review at the State's discretion where circumstances have modified (for example, a change in State statute) the extent to which utility adjustments are eligible for reimbursement by the State or those instances where a local SDOT's legal basis for payment of utility adjustments differs from that of the State.

Each SDOT's is also required (23 CFR 645.215) to develop and submit to FHWA their utility accommodation policies (*formerly OMB Control #:* 2125–0514) that will be used to regulate and manage the utility facilities within the rights-of-way of Federal-aid highway projects. The agencies utility accommodation policies need to address the basis for utility facilities to use and occupy highway right-of-ways; the State's authority to regulate such use; and the policies and/or procedures employed for managing and accommodating utilities within the right-of-ways of Federal-aid highway projects. Upon FHWA's approval of the policy statement, the SDOT may take any action required in accordance with the approved policy statement without a case-by-case review by the FHWA. In addition, the utility accommodation policy statements that have been approved previously by the FHWA are periodically reviewed by the SDOT's to determine if updating is necessary to reflect policy changes.

Respondents: 52 SDOT's, including the District of Columbia and Puerto Rico, local agency transportation departments, and utility companies.

Frequency: Developing and recording costs and expenses for utility adjustments are submitted as they occur during the year (annually) by utility companies to SDOTs or local agency transportation departments. The SDOT's and local agency transportation departments are each involved in an average of 15 utility use and occupancy agreements (or permits) per year for an annual frequency of 69,000. SDOT's are allowed to submit their eligibility statement for utility adjustments and their utility accommodation policies when warranted by changes or updates occur, or at the SDOT's discretion. It is estimated 10 SDOT's will update either their eligibility statement for utility agreements or utility accommodation policies per year.

Estimated Average Annual Burden per Response: The estimated average amount of time required to develop and record the costs for each utility adjustment is 8 hours. The estimated amount of time required by the SDOT's and local agency transportation departments to process each utility use and occupancy agreement (permit) is 8 hours. The estimated amount of time for each update to the SDOT's eligibility statement for utility adjustments has an average burden of 18 hours. The estimated amount of time for each update and submittal of a SDOT's utility accommodation policy has an average burden of 280 hours.

Estimated Total Annual Burden Hours: The annual burden associated with developing and recording the costs for adjusting utility facilities is 72,000 hours based on an estimate of 9,000 adjustments that utility companies perform annually that may be eligible for Federal-aid highway funding allowing SDOT's or local agency transportation departments to request reimbursement from FHWA. The annual burden associated with preparing, submitting and approving utility use and occupancy agreements (permits) is 552,000 burden-hours. The annual burden associated with developing and approving updates to SDOT's eligibility statement for utility adjustments is 90 hours. The annual burden associated with developing and approving updates to SDOT's utility accommodation policies is 1,400 hours. The accumulated burden for the combined information collection is 625,490.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: July 25, 2008.

Judith Kane,

Team Leader, Management Programs and Analysis Division.

[FR Doc. E8–17672 Filed 7–31–08; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2008–0113]

Agency Information Collection Activities: Notice of Request for Renewal of a Previously Approved Information Collection

AGENCY: Office of the Secretary (OST).

ACTION: Notice and request for comments.

SUMMARY: The OST invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for renewal of a previously approved information collection that is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by September 30, 2008.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FHWA–2008–0113 by any of the following methods:

Web Site: http://dms.dot.gov. Follow the instructions for submitting comments on the DOT electronic docket site.

Fax: 1–202–493–2251.

Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590.

Hand Delivery: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Michael Koontz, 202–366–2076, Office of Natural and Human Environment, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue, Washington, DC, 20590. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

OMB: 2125–0614.

Title: Annual Reporting for the Congestion Mitigation and Air Quality Improvement (CMAQ) Program.

Background: Section 1808 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users of 2005 (SAFETEA–LU) calls for an *Evaluation and Assessment of CMAQ Projects.* The statute calls for the identification and analysis of a representative sample of CMAQ projects and the development and population of a database that describes the impacts of the program both on traffic congestion levels and air quality. To establish and maintain this database, the FHWA is requesting States to submit annual reports on their CMAQ investments that cover projected air quality benefits, financial information, a brief description of projects, and several other factors outlined in the Interim Program Guidance for the CMAQ program. States are requested to provide the end of year summary reports via the automated system provided through FHWA by the first day of March of each year, covering the prior Federal fiscal year.

Respondents: 51; each State DOT, and Washington, DC.

Frequency: Annually.

Estimated Average Burden per Response: 125 hours per annual report.

Estimated Total Annual Burden Hours: 6,375 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: July 25, 2008.

Judith Kane,

Team Leader, Management Programs and Analysis Division.

[FR Doc. E8–17673 Filed 7–31–08; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Connecticut Department of Transportation

[Waiver Petition Docket Number FRA–2008–0088]

The Connecticut Department of Transportation (CDOT) in conjunction with the National Railroad Passenger Corporation (Amtrak) seeks a waiver of compliance from certain provisions of 49 CFR Part 238, *Passenger Equipment Safety Standards.* Specifically, § 238.309(d)(2), which provide the clean, oil, test, and stencil (COT&S) requirements for air brake valves.

In the aftermath of the events surrounding Hurricane Katrina, the Federal Emergency Management Agency (FEMA) has identified a need to have passenger car equipment readily available for emergency evacuation purposes. CDOT has responded by making 10 demotored SPV passenger cars that have been identified and are currently in storage available to support this effort. In order to expedite the return of this equipment for immediate service, CDOT requests relief from the COT&S requirements.

The range of dates in which these cars last had a COT&S performed is July 2001, to May 2006. The regulation requires a COT&S every 1,476 days. Prior to being placed in-service, CDOT will contract Amtrak to perform a single car air brake test on each car to ensure the integrity of the air brake system. Additionally, Amtrak will ensure the integrity of all safety critical systems, as outlined in §§ 238.303, 238.305 and 238.311 and will be the custodian of the cars while in emergency stand-by status.

FRA reserves the right to issue a temporary interim waiver if an emergency arises or other conditions warrant before the comment period ends for this waiver request.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the

appropriate docket number (e.g., Waiver Petition Docket Number FRA–2008–0088) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received within 20 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

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 comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Issued in Washington, DC on July 29, 2008.

Michael Logue,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. E8–17705 Filed 7–31–08; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Norfolk Southern Corporation

[Docket Number FRA–2008–0077]

The Norfolk Southern Corporation (NS) seeks a waiver of compliance from certain provisions of 49 CFR Part 232, *Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment.* Specifically, NS is requesting a waiver to increase the 4-hour off-air requirement, as prescribed in 49 CFR 232.205(a)(3), to 24 hours at certain locations on NS's Pocahontas Division in West Virginia.

NS has approximately 12 locations where they will park a train of approximately 100 cars that have received a Class I brake test. The locomotives will cut away from the cars and leave them in the siding without any means to maintain air. These cars will remain in the siding until another train arrives and attaches to the cars that have been left in the siding. Because these cars have been off-air for more than 4 hours (sometimes as much as 24 hours) § 205(a)(3) requires that they be given another Class I brake test, although they have only travelled a distance of approximately 150 miles. NS feels that these tests are unnecessary and subject their employees to performing these tests in less than desirable walking conditions. NS has tried to leave a locomotive attached to the cars in the siding to maintain air pressure. However, NS states that this is not cost effective, since the locomotive may be required to idle for 24 hours at a cost of $57 an hour, in addition to the system average of $750 per day for the locomotive out of service cost. The addition of yard air sources has been considered, but due to the geographic location and lack of available electrical power, the installation cost is estimated at $707,397.

NS does not feel that safety will be compromised as a Class III brake test would be performed on the blocks left in the siding when added to trains. To date, NS states that there is no evidence of vandalism at any of the locations where they would invoke this waiver.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2008–0077) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

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 comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Issued in Washington, DC on July 29, 2008.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E8–17707 Filed 7–31–08; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2008 0069]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel TRINITY.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime

Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2008–0069 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before September 2, 2008.

ADDRESSES: Comments should refer to docket number MARAD–2008–0069. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel TRINITY is:

Intended Use: ''Sailing vessel instruction.''

Geographic Region: ''Southern California in the area outside of Ventura Harbor.''

Privacy Act

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

Dated: July 23, 2008.

By order of the Maritime Administrator.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E8–17616 Filed 7–31–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–515 (Sub-No. 2)]

Central Oregon & Pacific Railroad, Inc.—Abandonment and Discontinuance of Service—in Coos, Douglas, and Lane Counties, OR

On July 14, 2008, the Central Oregon & Pacific Railroad, Inc. (CORP) filed an application under 49 U.S.C. 10903 for permission to abandon and discontinue service over portions of a line of railroad known as the Coos Bay Subdivision, which consists of (1) the Coos Bay Branch (which is owned by CORP), and (2) the Coquille Branch and the LPN Branch (which are leased by CORP).[1]

CORP seeks authority to abandon certain portions of the Coos Bay Subdivision that it owns, namely the line extending from milepost 669.0 near Vaughn to milepost 763.13 near Cordes, a distance of 94.13 miles in Coos, Douglas, and Lane Counties, OR. The line includes the stations of Richardson (milepost 685.0), Swisshome (milepost 697.1), Suislaw (milepost 697.8); Tide (milepost 699.2), Mapleton (milepost 705.3), Beck (milepost 709.0), Wendson (milepost 715.0), Cushman (milepost 716.0), Canary (milepost 721.3), Kroll (milepost 732.8), Gardiner Junction (milepost 738.8), Reedsport (milepost 740.4), Lakeside (milepost 752.1), Hauser (milepost 759.3), and Cordes (milepost 763.0); and traverses through United States Postal Service ZIP Codes 97439, 97441, 97449, 97453, 97459, 97461, 97467, 97480, 97487, 97490, and 97493.

CORP also seeks authority to discontinue service over the portions of the Coos Bay Subdivision that it leases:[2] (1) The Coquille Branch extending from milepost 763.13 near Cordes to milepost 785.5 near Coquille, a distance of 22.37 miles, in Coos County, OR, including the stations of North Bend (milepost 765.6), Coos Bay (milepost 768.9), McCormac (milepost 770.5), Hayden (milepost 773.1), Chrome (milepost 781.2), and Coquille (milepost 785.6), and traversing through Unites States Postal Service ZIP Codes 97420, 97423, and 97459; and (2) the LPN Branch extending between CORP milepost 738.8 and LPN Branch milepost 2.0, a distance of 2.0 miles, in Douglas County, OR, including the station of Gardiner Junction (milepost 738.8), and traversing through United States Postal Service ZIP Code 97441.

The line does contain federally granted rights-of-way. Any documentation in CORP's possession will be made available promptly to those requesting it. CORP's entire case for abandonment and discontinuance was filed with the application.

This line of railroad has appeared on CORP's system diagram map or has been included in its narrative in category 1 since May 8, 2008.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

Any interested person may file with the Surface Transportation Board written comments concerning the proposed abandonment and discontinuance or protests (including the protestant's entire opposition case), by August 28, 2008. All interested persons should be aware that following any abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 U.S.C. 10905 (49 CFR 1152.28) and any request for a trail use condition under 16 U.S.C. 1247(d) (49 CFR 1152.29) must be filed by August 28, 2008. Each trail use request must be accompanied by a $200 filing fee. *See* 49 CFR 1002.2(f)(27). Applicant's reply to any opposition statements and its response to trail use

[1] The Coos Bay Subdivision also consists of CORP's line between Vaughn and Eugene, OR. CORP does not propose to abandon this additional segment. A feeder line application to purchase the Coos Bay Subdivision has been filed in STB Finance Docket No. 35160.

[2] CORP leases the Coquille Branch from the Union Pacific Railroad Company and leases the LPN Branch from Longview, Portland & Northern Railway Company.

requests must be filed by September 12, 2008. *See* 49 CFR 1152.26(a). A final decision will be issued by October 31, 2008.

Persons opposing the proposed abandonment and/or discontinuance who wish to participate actively and fully in the process should file a protest. Persons who may oppose the abandonment and/or discontinuance but who do not wish to participate fully in the process or by submitting verified statements of witnesses containing detailed evidence should file comments. Persons seeking information concerning the filing of protests should refer to 49 CFR 1152.25. Persons interested only in seeking public use or trail use conditions should also file comments.

In addition, a commenting party or protestant may provide: (i) An offer of financial assistance (OFA) for continued rail service, pursuant to 49 U.S.C. 10904 (due 120 days after the application is filed or 10 days after the application is granted by the Board, whichever occurs sooner); (ii) recommended provisions for protection of the interests of employees; (iii) a request for a public use condition under 49 U.S.C. 10905; and (iv) a statement pertaining to prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29.

Written comments and protests, including all requests for public use and trail use conditions, must indicate the proceeding designation STB Docket No. AB–515 (Sub-No. 2) and must be sent to: (1) Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001, and (2) Terence M. Hynes, Sidley Austin LLP, 1501 K Street, NW., Washington, DC 20005. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in 49 CFR part 1152, every document filed with the Board must be served on all parties to the abandonment and discontinuance proceeding. 49 CFR 1104.12(a).

The line sought to be abandoned and discontinued will be available for subsidy or sale for continued rail use, if the Board decides to permit the abandonment and/or discontinuance, in accordance with applicable laws and regulations (49 U.S.C. 10904 and 49 CFR 1152.27). Each OFA must be accompanied by a $1,500 filing fee. *See* 49 CFR 1002.2(f)(25). No subsidy arrangement approved under 49 U.S.C. 10904 shall remain in effect for more than 1 year unless otherwise mutually agreed by the parties (49 U.S.C. 10904(f)(4)(B)). Applicant will promptly provide upon request to each interested party an estimate of the subsidy and minimum purchase price required to keep the line in operation. CORP's representative to whom inquiries may be made concerning sale or subsidy terms is set forth above.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (866) 254–1792 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–9339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact SEA. EAs in this type of abandonment proceeding normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

By decisions served in this proceeding on July 29, 2008, and on August 1, 2008, the Board is also providing for a public hearing to be held in this proceeding.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: July 29, 2008.

By the Board, David M. Konschnik, Director of Proceedings.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–17694 Filed 7–31–08; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35165]

Sierra & Central Pacific Railroad Company, Inc.—Acquisition and Operation Exemption—Sierra Northern Railway and Sierra Railroad Company

Sierra & Central Pacific Railroad Company, Inc. (SCPRR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Sierra Northern Railway (SNR) and Sierra Railroad Company (SRC) and to operate, pursuant to a Letter of Intent dated March 20, 2008,[1] approximately 80.30 miles of track as follows: (1) SRC's rail line between Oakdale, CA, milepost 0.0, and Sonora, CA, milepost 49.0; (2) SNR's Woodland Branch, between milepost 1.75 and milepost 16.5, with the right of access through the Union Pacific Railroad Company's (UP) Westgate Yard; (3) SNR's industrial switching operation over approximately 4.50 miles at the Riverbank Arsenal over property leased from the U.S. Government through its agent NI Industries, Inc.; and (4) SNR's operation at the Port of Sacramento over track that is leased from the Port of Sacramento, with the right of access through UP's Westgate Yard.[2] All of the lines are currently operated by SNR.

This transaction is related to the concurrently filed verified notice of exemption in STB Finance Docket No. 35166, *Patriot Rail, LLC, Patriot Rail Holdings LLC, and Patriot Rail Corp.—Continuance in Control Exemption—Sierra & Central Pacific Railroad Company, Inc.* In that proceeding, Patriot Rail, LLC and its subsidiaries, Patriot Rail Holdings LLC and Patriot Rail Corp., jointly have filed a verified notice of exemption to continue in control of SCPRR, upon its becoming a rail carrier.

The transaction is scheduled to be consummated on or after August 15, 2008 (30 days after the notice of exemption was filed).

SCPRR certifies that its projected annual revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier and will not exceed $5 million. According to SCPRR, the proposed acquisition and operation does not involve a provision or agreement that may limit future interchange with a third-party connecting carrier.

Pursuant to the Consolidated Appropriations Act, 2008, Public Law 110–161, section 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: Collecting, storing or transferring solid waste outside of its original shipping container; or separating or processing

[1] A redacted version of the Letter of Intent was included with the notice. The full version of the Letter of Intent was concurrently filed under seal along with a motion for protective order. The motion for protective order is being addressed in a separate decision.

[2] The 80.38 miles of track that SCPRR is acquiring include spur, side, and yard trackage in addition to the main lines being acquired.

solid waste (including baling, crushing, compacting and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than August 8, 2008 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35165, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Louis F. Gitomer, Esq., 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: July 25, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–17657 Filed 7–31–08; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35166]

Patriot Rail, LLC, Patriot Rail Holdings LLC, and Patriot Rail Corp.—Continuance in Control Exemption—Sierra & Central Pacific Railroad Company, Inc.

Patriot Rail, LLC (PRL), and its subsidiaries, Patriot Rail Holdings LLC (PRH) and Patriot Rail Corp. (PRC) (collectively, Patriot), all noncarriers, jointly have filed a verified notice of exemption to continue in control of Sierra & Central Pacific Railroad Company, Inc. (SCPRR), upon SCPRR's becoming a Class III rail carrier.

This transaction is related to a concurrently filed verified notice of exemption in STB Finance Docket No. 35165, *Sierra & Central Pacific Railroad Company, Inc.—Acquisition and Operation Exemption—Sierra Northern Railway and Sierra Railroad Company*. In that proceeding, SCPRR seeks to acquire from Sierra Northern Railway (SNR) and Sierra Railroad Company, Inc., and to operate approximately 80.30 miles of track in the State of California, currently operated by SNR.

The transaction is scheduled to be consummated on or after August 15, 2008 (30 days after the notice of exemption was filed).

PRL is a noncarrier limited liability company that owns 51% of the equity interest in PRH, which, in turn, owns 100% of the stock of PRC. PRC is a noncarrier holding company that controls the following Class III rail carries: Tennessee Southern Railroad Company, Rarus Railway Company, Utah Central Railway Company, Sacramento Valley Railroad, Inc., and The Louisiana and North West Railroad Company LLC. Pursuant to the transaction, PRC will acquire direct control of SCPRR. PRL and PRH, through their control of PRC, will acquire indirect control of SCPRR.

Patriot states that: (1) The rail lines to be acquired and operated by SCPRR do not connect with it or any other railroad in the Patriot corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any other railroad in the Patriot corporate family; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all the carriers involved are Class III rail carriers.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than August 8, 2008 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35166, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Louis F. Gitomer, Esq., 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: July 25, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–17655 Filed 7–31–08; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35169]

Watco Companies, Inc.—Continuance in Control Exemption—Baton Rouge Southern Railroad, LLC

Watco Companies, Inc. (Watco), a noncarrier, has filed a verified notice of exemption to continue in control of Baton Rouge Southern Railroad, LLC (BRSR), upon BRSR's becoming a Class III rail carrier.[1]

This transaction is related to a concurrently filed verified notice of exemption in STB Finance Docket No. 35159, *Baton Rouge Southern Railroad, LLC—Lease and Operation Exemption—The Kansas City Southern Railway Company*. In that proceeding, BRSR seeks an exemption under 49 CFR 1150.31 to lease and to operate approximately 8.2 miles of rail line owned by The Kansas City Southern Railway Company between specified points in Louisiana.

The parties intend to consummate the transaction on or shortly after August 19, 2008, and hence after the August 17, 2008 effective date of the exemption.

Watco currently controls 17 Class III rail carriers: South Kansas and Oklahoma Railroad Company, Palouse River & Coulee City Railroad, Inc., Timber Rock Railroad, Inc., Stillwater Central Railroad, Inc., Eastern Idaho Railroad, Inc., Kansas & Oklahoma Railroad, Inc., Pennsylvania Southwestern Railroad, Inc., Great Northwest Railroad, Inc., Kaw River Railroad, Inc., Mission Mountain Railroad, Inc., Mississippi Southern Railroad, Inc., Yellowstone Valley Railroad, Inc., Louisiana Southern Railroad, Inc., Arkansas Southern Railroad, Inc., Alabama Southern Railroad, Inc., Vicksburg Southern Railroad, Inc, and Austin Western Railroad, Inc.

Watco represents that: (1) The rail lines to be operated by BRSR do not connect with any other railroads in the

[1] Watco owns 100% of the issued and outstanding stock of BRSR.

Watco corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect these rail lines with any other railroad in the Watco corporate family; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed no later than August 8, 2008 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35169, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Karl Morell, Of Counsel, Ball Janik, LLP, Suite 225, 1455 F Street, NW., Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: July 25, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–17450 Filed 7–31–08; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35159]

Baton Rouge Southern Railroad, LLC—Lease and Operation Exemption—The Kansas City Southern Railway Company

Baton Rouge Southern Railroad, LLC (BRSR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire, by lease, and to operate approximately 8.2 miles of rail line of The Kansas City Southern Railway Company (KCS) in Louisiana.[1] The lines to be leased and operated are: (1) KCS's UTL Lead located between the end of the turnout of switch near milepost 216.0 ''D-Line'' of the New Orleans Subdivision and extending west approximately 2 miles to the end of the UTL Lead; and (2) the tracks in KCS's New Yard and Dome Yard, approximately 6.2 miles.

According to BRSR, the lease agreement will contain a provision that prohibits BRSR from interchanging traffic with a third party at Baton Rouge, LA.

This transaction is related to a concurrently filed verified notice of exemption in STB Finance Docket No. 35169, *Watco Companies, Inc.—Continuance in Control Exemption—Baton Rouge Southern Railroad, LLC*. In that proceeding, Watco Companies, Inc., has filed a verified notice of exemption to continue in control of BRSR upon BRSR's becoming a Class III rail carrier.

BRSR certifies that its projected annual revenues as a result of the transaction will not result in BRSR becoming a Class II or Class I rail carrier. However, because its projected annual revenues will exceed $5 million, BRSR also certifies that it has complied with the notice requirements of 49 CFR 1150.32(e).

The transaction is expected to be consummated on or shortly after August 19, 2008, 60 days after BRSR's certification of the notice requirements of section 1150.32(e).

Pursuant to the Consolidated Appropriations Act, 2008, Public Law 110–161, section 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than August 12, 2008 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35159, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Of Counsel, Ball Janik LLP, Suite 225, 1455 F Street, NW., Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: July 25, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–17446 Filed 7–29–08; 8:45 am]

BILLING CODE 4915–01–P

[1] BRSR states that it has been negotiating an agreement with KCS for several months and that all essential terms have been agreed to between the parties. The agreement is expected to be finalized soon.

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations Pursuant to New Zimbabwe Executive Order Signed by President Bush on July 25, 2008 ''Blocking Property of Additional Persons Undermining Democratic Processes or Institutions in Zimbabwe'' (the ''Order'')

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of seventeen newly-designated entities and one individual whose property and interests in property are blocked pursuant to the Order.

DATES: The designation by the Director of OFAC of the seventeen entities and one individual identified in this notice, pursuant to the Order is effective July 25, 2008.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW. (Treasury Annex), Washington, DC 20220, Tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

Information about this designation and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via

facsimile through a 24-hour fax-on-demand service, Tel.: 202/622–0077.

Background

On July 25, 2008, the President issued a new Executive Order with respect to Zimbabwe pursuant to, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–06). In the Order, the President took additional steps with respect to the national emergency declared in Executive Order 13288 of March 7, 2003, and relied upon for additional steps taken in Executive Order 13391 of November 22, 2005, in order to address the continued political repression and the undermining of democratic processes and institutions in Zimbabwe.

Section 1 of the Order blocks, with certain exceptions, all property, and interests in property, that are in, or hereafter come within, the United States or the possession or control of United States persons for persons determined by the Secretary of the Treasury, in consultation with the Secretary of State, to satisfy any of the criteria set forth in subparagraphs (a)(i) through (a)(vii) of Section 1. On July 25, 2008, the Director of OFAC designated, pursuant to one or more of the criteria set forth in subparagraphs (a)(i) through (a)(vii) of Section 1 of the Order, the following seventeen entities and one individual, whose names have been added to the list of Specially Designated Nationals and whose property and interests in property are blocked, pursuant to the Order:

Entities

1. AGRICULTURAL DEVELOPMENT BANK OF ZIMBABWE (a.k.a. AGRIBANK; a.k.a. AGRICULTURAL BANK OF ZIMBABWE), Box 369, Harare, Zimbabwe; 15th Floor, Hurudza House, 14–16 Nelson Mandela Avenue, Harare, Zimbabwe; Phone No. 263–4–774426; Fax No. 263–4–774556 [ZIMBABWE]
2. COMOIL (PVT) LTD, 2nd Floor, Travel Plaza, 29 Mazoe St., Box CY2234, Causeway, Harare, Zimbabwe; Block D, Emerald Hill Office P, Emerald Park, Harare, Zimbabwe [ZIMBABWE]
3. DIVINE HOMES (PVT) LTD (a.k.a. DIVINE HOMES), 12 Meredith Drive, Eastlea, Harare, Zimbabwe; 31 Kensington, Highlands, Harare, Zimbabwe; Shop # 6, Hillside Shopping Center, Harare, Zimbabwe [ZIMBABWE]
4. FAMBA SAFARIS, P.O. Box CH273, Chisipite, Harare, Zimbabwe; 4 Wayhill Lane, Umwisdale, Harare, Zimbabwe [ZIMBABWE]
5. INDUSTRIAL DEVELOPMENT CORPORATION OF ZIMBABWE LTD (a.k.a. INDUSTRIAL DEVELOPMENT CORPORATION OF ZIMBABWE), P.O. Box CY1431, Causeway, Harare, Zimbabwe; 93 Park Lane, Harare, Zimbabwe; Phone 263–4–794805; Fax No. 263–4–250385 [ZIMBABWE]
6. INFRASTRUCTURE DEVELOPMENT BANK OF ZIMBABWE (a.k.a. ZIMBABWE DEVELOPMENT BANK), P.O. Box 1720, Harare, Zimbabwe; ZDB House, 99 Rotten Row, Harare, Mashonaland East, Zimbabwe; Phone No. 263–4–7501718; Fax No. 263–4–7744225 [ZIMBABWE]
7. INTERMARKET HOLDINGS LIMITED, 10th Floor ZB House, 46 Speke Avenue, P.O. Box 3198, Harare, Zimbabwe; Phone No. 263–4–751168; Fax No. 263–4–251029 [ZIMBABWE]
8. MINERALS MARKETING CORPORATION OF ZIMBABWE (a.k.a. MMCZ), 90 Mutare Road, Harare, Zimbabwe; P.O. Box 2628, Harare, Zimbabwe; Phone No. 263–4–486946; Fax No. 263–4–487261 [ZIMBABWE]
9. ORYX NATURAL RESOURCES (a.k.a. ORYX DIAMONDS; a.k.a. ORYX DIAMONDS (PTY) LTD; a.k.a. ORYX DIAMONDS LTD.; a.k.a. ORYX ZIMCON (PVT) LIMITED), Bank of Nova Scotia Bldg., Fourth Floor, George Town, Grand Cayman, Cayman Islands; 3, Victor Darcy Close, Borrowdale, Harare, Zimbabwe; S Drive, George Town, Grand Cayman, Cayman Islands; Parc Nicol Offices, Bldg. 6, 301, William Nicol Drive, Bryanston, Gauteng 2021, South Africa; Alexander Forbes Building, Windhoek, Namibia; Bermuda [ZIMBABWE]
10. OSLEG (a.k.a. OPERATION SOVEREIGN LEGITIMACY; a.k.a. OSLEG (PVT.) LTD.; a.k.a. OSLEG ENTERPRISES; a.k.a. OSLEG MINES; a.k.a. OSLEG MINING AND EXPLORATION; a.k.a. OSLEG VENTURES), Lonhoro House, Union Avenue, Harare, Zimbabwe [ZIMBABWE]
11. SCOTFIN LIMITED, 10th Floor ZB House, 46 Speke Avenue, P.O. Box 3198, Harare, Zimbabwe; Phone No. 263–4–751168; Fax No. 263–4–251029 [ZIMBABWE]
12. ZB BANK LIMITED (a.k.a. ZB BANK; a.k.a. ZBCL; a.k.a. ZIMBABWE BANKING CORPORATION LIMITED; a.k.a. ZIMBANK), Zimbank House, Cnr. 1st Street/Speke Avenue, Harare, Zimbabwe; P.O. Box 3198, Harare, Zimbabwe; Phone No. 263–4–751168; Fax No. 263–4–757497 [ZIMBABWE]
13. ZB FINANCIAL HOLDINGS LIMITED (a.k.a. FINHOLD; a.k.a. WWW.ZB.CO.ZW; a.k.a. ZIMBABWE FINANCIAL HOLDINGS LIMITED), 10th Floor ZB House, 46 Speke Avenue, P.O. Box 3198, Harare, Zimbabwe; National ID No. 1278/89 (Zimbabwe); Phone No. 263–4–751168; Fax No. 263–4–251029 [ZIMBABWE]
14. ZB HOLDINGS LIMITED, 10th Floor ZB House, 46 Speke Avenue, P.O. Box 3198, Harare, Zimbabwe; Phone No. 263–4–751168; Fax No. 263–4–251029 [ZIMBABWE]
15. ZIMBABWE IRON AND STEEL COMPANY (a.k.a. ZISCO; a.k.a. ZISCOSTEEL), Private Bag 2, Redcliff Zimbabwe, Zimbabwe; Phone No. 263–55–62401; Fax No. 263–55–68666 [ZIMBABWE]
16. ZIMBABWE MINING DEVELOPMENT CORPORATION (a.k.a. ZIMBABWE MINING DEVELOPMENT CORP.; a.k.a. ZMDC), MMCZ Building, 90 Mutare Rd., Harare, Zimbabwe; P.O. Box 4101, Harare, Zimbabwe; Phone No. 263–4–487014; Fax No. 263–4–487022 [ZIMBABWE]
17. ZIMRE HOLDINGS LIMITED (a.k.a. WWW.ZHL.CO.ZW; a.k.a. ZIMRE), 9th Floor, Zimre Centre, Cnr. Leopold Takawira/Kwame Nkrumah Avenue, P.O. Box 4839, Harare, Zimbabwe; Phone No. 263–4–772963; Fax No. 263–4–772972 [ZIMBABWE]

Individual

1. AL-SHANFARI, Thamer Bin Said Ahmed (a.k.a. AL SHANFARI, SHEIKH THAMER; a.k.a. AL SHANFARI, Thamer; a.k.a. AL SHANFARI, Thamer Said Ahmed; a.k.a. AL-SHANFARI, Thamer Bin Saeed; a.k.a. AL-SHANFARI, Thamer Said Ahmed; a.k.a. SHANFARI, Thamer), P.O. Box 18, Ruwi 112, Oman; DOB 3 Jan 1968; citizen Oman; nationality Oman; Passport 00000999 (Oman); alt. Passport 3253 (Oman); Chairman & Managing Director, Oryx Group and Oryx Natural Resources (individual) [ZIMBABWE]

Dated: July 25, 2008.

Virginia R. Canter,

Acting Director, Office of Foreign Assets Control.

[FR Doc. E8–17647 Filed 7–31–08; 8:45 am]

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Corrections

Federal Register

Vol. 73, No. 149

Friday, August 1, 2008

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2870]

Petitions for Reconsideration of Action in Rulemaking Proceeding

Correction

In notice document E8–17276 beginning on page 43753 in the issue of Monday, July 28, 2008, make the following correction:

On page 43753, in the third column, in the first paragraph, in the thirteenth line, ''September 11, 2008'' should read ''August 12, 2008''.

[FR Doc. Z8–17276 Filed 7–31–08; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent to Request Approval From OMB of One New Public Collection of Information: On–Boarding Information for New Hire Candidates

Correction

In notice document E8–16543 beginning on page 41367 in the issue of Friday, July 18, 2008, make the following correction:

On page 41368, in the second column, in the signature block, ''June 14, 2008'' should read ''July 14, 2008''.

[FR Doc. Z8–16543 Filed 7–31–08; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
August 1, 2008

Part II

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 65

Mandatory Country of Origin Labeling of Beef, Pork, Lamb, Chicken, Goat Meat, Perishable Agricultural Commodities, Peanuts, Pecans, Ginseng, and Macadamia Nuts; Interim Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 65

[Docket No. AMS–LS–07–0081]

RIN 0581–AC26

Mandatory Country of Origin Labeling of Beef, Pork, Lamb, Chicken, Goat Meat, Perishable Agricultural Commodities, Peanuts, Pecans, Ginseng, and Macadamia Nuts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: The Farm Security and Rural Investment Act of 2002 (2002 Farm Bill), the 2002 Supplemental Appropriations Act (2002 Appropriations), and the Food, Conservation and Energy Act of 2008 (2008 Farm Bill) amended the Agricultural Marketing Act of 1946 (Act) to require retailers to notify their customers of the country of origin of covered commodities. Covered commodities include muscle cuts of beef (including veal), lamb, chicken, goat, and pork; ground beef, ground lamb, ground chicken, ground goat, and ground pork; wild and farm-raised fish and shellfish; perishable agricultural commodities; macadamia nuts; pecans; ginseng; and peanuts. The implementation of mandatory country of origin labeling (COOL) for all covered commodities, except wild and farm-raised fish and shellfish, was delayed until September 30, 2008.

The 2008 Farm Bill contains a number of provisions that amended the COOL provisions in the Act. These changes include the addition of chicken, goat, macadamia nuts, pecans, and ginseng as covered commodities, the addition of provisions for labeling products of multiple origin, as well as a number of other changes that are discussed more fully in the Supplementary Information portion of this rule. However, the implementation date of September 30, 2008, was not changed by the 2008 Farm Bill. Therefore, in order to meet the September 30, 2008, implementation date and to provide the newly affected industries the opportunity to provide comments prior to issuing a final rule, the Department is issuing this interim final rule. This interim final rule contains definitions, the requirements for consumer notification and product marking, and the recordkeeping responsibilities of both retailers and suppliers for covered commodities. The provisions in this interim final rule do not affect the regulatory requirements for fish and shellfish that were published in the October 5, 2004, **Federal Register**.

DATES: This interim final rule is effective September 30, 2008. Comments must be submitted on or before September 30, 2008 to be assured of consideration. The requirements of this rule do not apply to covered commodities produced or packaged before September 30, 2008.

ADDRESSES: Comments should be submitted through the Internet at *http://www.regulations.gov.* Send written comments to: Country of Origin Labeling Program, Room 2607–S; Agricultural Marketing Service (AMS), USDA; STOP 0254; 1400 Independence Avenue, SW., Washington, DC 20250–0254, or by facsimile to 202/354–4693. All comments received will be posted on the Web site at: *http://www.regulations.gov.* Comments sent to the above location that specifically pertain to the information collection and recordkeeping requirements of this action should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street, NW., Room 725, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Erin Morris, Associate Deputy Administrator, Poultry Programs, AMS, USDA, by telephone on 202/720–5131, or via e-mail at: *erin.morris@usda.gov.*

SUPPLEMENTARY INFORMATION: The information that follows has been divided into three sections. The first section provides background information including questions and answers about this interim final rule, a summary of the history of this rulemaking, and a general overview of the law, including the changes contained in the 2008 Farm Bill. The second section provides a discussion of the rule's requirements, including a summary of changes from the October 30, 2003, proposed rule as well as a summary of the comments received in response to the relevant prior requests for comments associated with this rulemaking and the Agency's responses to these comments. The prior requests for comments include: The proposed rule published in the October 30, 2003, **Federal Register** (68 FR 61944); the interim final rule for fish and shellfish published in the October 5, 2004, **Federal Register** (69 FR 59708); the reopening of the comment period (for costs and benefits) for the interim final rule that was published in the November 27, 2006, **Federal Register** (71 FR 68431); the reopening of the comment period for all aspects of the interim final rule that was published in the June 20, 2007, **Federal Register** (72 FR 33851); and the reopening of the comment period for the proposed rule for all covered commodities that was published in the June 20, 2007, **Federal Register** (72 FR 33917). The last section provides for the required impact analyses including the Regulatory Flexibility Act, the Paperwork Reduction Act, Civil Rights Analysis, and the relevant Executive Orders.

I. Background

Questions and Answers Concerning This Interim Final Rule

What are the general requirements of Country of Origin Labeling?

The 2002 and 2008 Farm Bills amended the Act to require retailers to notify their customers of the country of origin of beef (including veal), lamb, pork, chicken, goat, wild and farm-raised fish and shellfish, perishable agricultural commodities, peanuts, pecans, ginseng, and macadamia nuts. The implementation of mandatory COOL for all covered commodities except wild and farm-raised fish and shellfish was delayed until September 30, 2008. The law defines the terms ''retailer'' and ''perishable agricultural commodity'' as having the meanings given those terms in section 1(b) of the Perishable Agricultural Commodities Act of 1930 (PACA) (7 U.S.C. 499 *et seq.*). Under PACA, a retailer is any person engaged in the business of selling any perishable agricultural commodity at retail. Retailers are required to be licensed when the invoice cost of all purchases of perishable agricultural commodities exceeds $230,000 during a calendar year. The term perishable agricultural commodity means fresh and frozen fruits and vegetables.

Food service establishments are specifically exempted as are covered commodities that are ingredients in a processed food item. In addition, the law specifically outlines the criteria a covered commodity must meet to bear a ''United States country of origin'' designation.

How do I find out if my product is considered a covered commodity or if it is labeled accurately under the COOL law?

This regulation contains the requirements for labeling covered commodities and for determining whether a product is subject to this rule. However, additional questions regarding

whether a product is considered a covered commodity or is labeled accurately under this regulation may be e-mailed to *cool@usda.gov.*

Given that the law exempts covered commodities from mandatory COOL if they are an ingredient in a processed food item, what is the definition of a processed food item and what types of products are considered processed food items?

A processed food item is a retail item derived from a covered commodity that has undergone specific processing resulting in a change in the character of the covered commodity, or that has been combined with at least one other covered commodity or other substantive food component (e.g., chocolate, breading, tomato sauce), except that the addition of a component (such as water, salt, or sugar) that enhances or represents a further step in the preparation of the product for consumption, would not in itself result in a processed food item. Specific processing that results in a change in the character of the covered commodity includes cooking (e.g., frying, broiling, grilling, boiling, steaming, baking, roasting), curing (e.g., salt curing, sugar curing, drying), smoking (hot or cold), and restructuring (e.g., emulsifying and extruding). Examples of items excluded include: Meatloaf, meatballs, fabricated steak, breaded veal cutlets, corned beef, sausage, breaded chicken tenders, and teriyaki flavored pork loin; a salad mix that contains lettuce and a dressing packet, a salad mix that contains lettuce and carrots, a fruit cup that contains melons, bananas, and strawberries; a bag of mixed vegetables that contains peas and carrots; and roasted peanuts.

What requirements must be met for a retailer to label a covered commodity as being of United States origin?

The law prescribes specific criteria that must be met for a covered commodity to bear a ''United States country of origin'' declaration. The specific requirements for covered commodities are as follows: Perishable agricultural commodities, pecans, ginseng, peanuts, and macadamia nuts—covered commodities must be produced in the United States; beef, lamb, pork, chicken, and goat—covered commodities must be derived exclusively from animals (1) born, raised, and slaughtered in the United States (including animals born and raised in Alaska and Hawaii and transported for a period of time not more than 60 days through Canada to the United States and slaughtered in the United States); or (2) present in the United States on or before July 15, 2008, and once present in the United States, remained continuously in the United States.

How should I label a retail product that contains a single type of covered commodity (such as a bag of frozen strawberries) prepared from raw material sources having different origins?

In this interim final rule, a single type of covered commodity (e.g., frozen peas), presented for retail sale in a consumer package, that has been prepared from raw material sources having different origins is referred to as a commingled covered commodity. Further, a commingled covered commodity does not include ground meat products. If the retail product contains two different types of covered commodities (e.g., peas and carrots), it is considered a processed food item and is not subject to mandatory COOL.

In the case of perishable agricultural commodities, peanuts, pecans, ginseng, and macadamia nuts, for imported covered commodities that have not subsequently been substantially transformed in the United States that are commingled with imported and/or United States origin commodities, the declaration shall indicate the countries of origin for all covered commodities in accordance with Customs and Border Protection (CBP) marking regulations (19 CFR part 134).

What are the requirements for labeling ground meat products, which often contain raw material sources from multiple countries?

The 2008 Farm Bill specifies that the notice of country of origin for ground beef, ground lamb, ground pork, ground goat, and ground chicken shall include a list of all of the countries of origin contained therein or reasonably contained therein. This interim final provides that when a raw material from a specific origin is not in a processor's inventory for more than 60 days, the country shall no longer be included as a possible country of origin.

Why can't the Department of Agriculture (USDA) track only imported products and consider all other products to be of ''United States Origin?''

The COOL provision of the Farm Bill applies to all covered commodities. Moreover, the law specifically identifies the criteria that products of United States origin must meet. The law further states that ''Any person engaged in the business of supplying a covered commodity to a retailer shall provide information to the retailer indicating the country of origin of the covered commodity.'' And, the law does not provide authority to control the movement of product. In fact, the use of a mandatory identification system that would be required to track controlled product through the entire chain of commerce is specifically prohibited.

When will the requirements of this regulation take effect?

The effective date of this regulation is September 30, 2008, because the statute provides for a September 30, 2008, implementation date. However, because some of the affected industries (goat, chicken, pecans, ginseng, and macadamia nuts) did not have prior opportunities to comment on this rulemaking and because the 2008 Farm Bill made changes to several of the labeling provisions for meat covered commodities, it is reasonable to allow time for covered commodities that are already in the chain of commerce and for which no origin information is known or been provided to clear the system. Therefore, the requirements of this rule do not apply to covered commodities produced or packaged before September 30, 2008. In addition, during the six month period following the effective date of the regulation, AMS will conduct an industry education and outreach program concerning the provisions and requirements of this rule. AMS has determined that this allocation of enforcement resources will ensure that the rule is effectively and rationally implemented. This AMS plan of outreach and education should significantly aid the industry in achieving compliance with the requirements of this rule.

How will the requirements of this regulation be enforced?

USDA has entered into agreements with States having existing enforcement infrastructure to assist in compliance reviews for fish and shellfish covered commodities. These agreements will be expanded to encompass all covered commodities. USDA determines the number of reviews to be conducted and has developed comprehensive procedures for the compliance reviews. Only USDA is able to initiate enforcement actions against a person found to be in violation of the law. The COOL statute does not provide for a private right of action. USDA may also conduct investigations of complaints made by any person alleging violations of these regulations when the Secretary determines that reasonable grounds for such investigation exist.

What are the recordkeeping requirements of this regulation?

Any person engaged in the business of supplying a covered commodity to a retailer, whether directly or indirectly, must maintain records to establish and identify the immediate previous source (if applicable) and immediate subsequent recipient of a covered commodity for a period of 1 year from the date of the transaction. In addition, the supplier of a covered commodity that is responsible for initiating a country(ies) of origin claim, which in the case of beef, lamb, chicken, goat, and pork is the slaughter facility, must possess or have legal access to records that are necessary to substantiate that claim. In the case of beef, lamb, chicken, goat, and pork, a producer affidavit shall be considered acceptable evidence on which the slaughter facility may rely to initiate the origin claim, provided it is made by someone having first-hand knowledge of the origin of the animal(s) and identifies the animal(s) unique to the transaction.

USDA continues to look for ways to minimize the burden associated with this rule. Therefore, under this interim final rule, slaughter facilities that slaughter animals that are part of a National Animal Identification System (NAIS) compliant system or other recognized official identification system (e.g., Canadian official system, Mexico official system) may also rely on the presence of an official ear tag and/or the presence of any accompanying animal markings (i.e., ''Can'', ''M''), as applicable, on which to base their origin claims. This provision also applies to such animals officially identified as a group lot.

For retailers, records and other documentary evidence relied upon at the point of sale by the retailer to establish a covered commodity's country(ies) of origin must be maintained for one year from the date the origin declaration is made at retail and, upon request, provided to any duly authorized representatives of USDA within 5 business days of the request.

For pre-labeled products, the label itself is sufficient evidence on which the retailer may rely to establish a product's origin. Pre-labeled products are those covered commodities that are labeled for country of origin by the firm or entity responsible for making the initial claim or by a further processor or repacker (i.e., firms that receive bulk products and package the products as covered commodities in a form suitable for the retailer). The country of origin information of pre-labeled covered commodities must be legibly printed on the shipping container, immediate container, or consumer ready package. In addition to indicating country of origin information, pre-labeled products must contain sufficient supplier information to allow USDA to trace-back the product to the supplier initiating the claim. Records that identify the covered commodity, the supplier, and for products that are not pre-labeled, the country of origin information must be maintained for a period of 1 year from the date the origin declaration is made at retail. Retailer and supplier records may be maintained in any location.

How does this regulation impact existing State country of origin labeling programs?

To the extent that State country of origin labeling programs encompass commodities that are not governed by this regulation, the States may continue to operate them. For those State country of origin labeling programs that encompass commodities that are governed by this regulation, these programs are preempted. However, this preemption does not apply to State marketing programs for commodities such as Washington apples, Idaho potatoes, etc.

While the COOL statute does not contain an express preemption provision, it is clear from the language in the statute that Congress intended preemption of State law. The law assigns enforcement responsibilities to the Secretary and encourages the Secretary to enter into partnerships with States with enforcement infrastructure to assist in the administration of the program. The law provides for a 30-day period in which retailers and suppliers may take the necessary corrective action after receiving notice of a nonconformance. The Secretary can impose a civil penalty only if the retailer or supplier has not made a good faith effort to comply, and only after the Secretary provides notice and an opportunity for a hearing. Allowing private rights of actions would frustrate the purpose of this comprehensive enforcement system in which Congress struck a delicate balance of imposing a requirement, but ensuring that the agency had wide latitude in enforcement discretion. Thus, it is clear that State laws and other actions were intended to be preempted.

Prior Documents in This Proceeding

This interim final rule is issued pursuant to the 2002 Farm Bill, the 2002 Appropriations, and the 2008 Farm Bill, which amended the Act to require retailers to notify their customers of the origin of covered commodities. In addition, the FY 2004 Consolidated Appropriations Act (Pub. L. 108–199) delayed the implementation of mandatory country of origin labeling (COOL) for all covered commodities except wild and farm-raised fish and shellfish until September 30, 2006. The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2006 (Pub. L. 109–97) delayed the applicability of mandatory COOL for all covered commodities except wild and farm-raised fish and shellfish until September 30, 2008.

On October 11, 2002, AMS published Guidelines for the Interim Voluntary Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts (67 FR 63367) providing interested parties with 180 days to comment on the utility of the voluntary guidelines.

On November 21, 2002, AMS published a notice requesting emergency approval of a new information collection (67 FR 70205) providing interested parties with a 60-day period to comment on AMS' burden estimates associated with the recordkeeping requirements as required by the Paperwork Reduction Act of 1995 (PRA). On January 22, 2003, AMS published a notice extending this comment period (68 FR 3006) an additional 30 days.

On October 30, 2003, AMS published the proposed rule for the mandatory COOL program (68 FR 61944) with a 60-day comment period. On December 22, 2003, AMS published a notice extending the comment period (68 FR 71039) an additional 60 days. On June 20, 2007, AMS reopened the comment period for the proposed rule for all covered commodities (72 FR 33917).

On October 5, 2004, AMS published the interim final rule for fish and shellfish (69 FR 59708) with a 90-day comment period. On December 28, 2004, AMS published a notice extending the comment period (69 FR 77609) an additional 60 days. On November 27, 2006, the comment period was reopened on the costs and benefits aspects of the interim final rule (71 FR 68431). On June 20, 2007, the comment period was reopened for all aspects of the interim final rule (72 FR 33851).

Overview of the Law

Section 10816 of Public Law 107–171 (7 U.S.C. 1638–1638d) and Section 11002 of Public Law 110–234 amended the Act (7 U.S.C. 1621 *et seq.*) to require retailers to inform consumers of the

country of origin of covered commodities.

The intent of this law is to provide consumers with additional information on which to base their purchasing decisions. COOL is a retail labeling program and as such does not provide a basis for addressing food safety. Food products, both imported and domestic, must meet the food safety standards of the Food and Drug Administration (FDA) and the Food Safety and Inspection Service (FSIS).

Under the 2002 Farm Bill, the term ''covered commodity'' was defined as muscle cuts of beef (including veal), lamb, pork; ground beef, ground lamb, ground pork; farm-raised fish and shellfish; wild fish and shellfish; perishable agricultural commodities; and peanuts. The 2008 Farm Bill added muscle cuts and ground chicken and goat; pecans; ginseng; and macadamia nuts as covered commodities. The law excludes items from needing to bear a country of origin declaration when a covered commodity is an ''ingredient in a processed food item.'' The law defines the terms ''retailer'' and ''perishable agricultural commodity'' as having the meanings given those terms in PACA.

The law specifically outlines the criteria a covered commodity must meet in order to bear a ''United States country of origin'' declaration. In the case of perishable agricultural commodities, peanuts, pecans, ginseng, and macadamia nuts, the covered commodity must be exclusively produced in the United States. In addition, under the 2008 Farm Bill, for perishable agricultural commodities, peanuts, pecans, macadamia nuts, and ginseng produced in the United States, designation of the State, region, or locality of the United States where such commodity was produced shall be sufficient to identify the country of origin.

In the case of beef, lamb, pork, chicken, and goat, covered commodities, the law states that they may bear a U.S. origin declaration only if they are derived exclusively from animals born, raised, and slaughtered in the United States (including animals born and raised in Alaska and Hawaii and transported for a period of time not more than 60 days through Canada to the United States and slaughtered in the United States). In addition, under the 2008 Farm Bill, animals present in the United States on or before July 15, 2008, and once present in the United States, remained continuously in the United States, are also eligible to bear a United States origin declaration.

The 2008 Farm Bill provided further direction on country of origin labeling for meat covered commodities. These changes include additional provisions concerning labeling meat covered commodities that have multiple countries of origin and specify that a retailer of a covered commodity derived from an animal that is imported into the United States for immediate slaughter shall designate the origin of such covered commodity as the country from which the animal was imported and the United States. In addition, the 2008 Farm Bill specifies that meat covered commodities derived from an animal that was not born, raised, or slaughtered in the United States shall designate a country other than the United States as the country of origin.

The 2008 Farm Bill also specifies how ground meat products shall be labeled. The notice of country of origin for ground beef, ground pork, ground lamb, ground chicken, or ground goat shall include a list of all countries of origin contained therein or a list of all reasonably possible countries of origin contained therein.

To convey the country of origin information, the law states that retailers may use a label, stamp, mark, placard, or other clear and visible sign on the covered commodity or on the package, display, holding unit, or bin containing the commodity at the final point of sale to consumers. Food service establishments, such as restaurants, cafeterias, food stands, and other similar facilities are exempt from these labeling requirements.

The law makes reference to the definition of ''retailer'' in section 1(b) of PACA as the meaning of ''retailer'' for the application of the labeling requirements under the COOL law. Under PACA and thus this interim final rule, a retailer is any person engaged in the business of selling any perishable agricultural commodity at retail. Retailers are required to be licensed when the invoice cost of all purchases of perishable agricultural commodities exceeds $230,000 during a calendar year. Therefore, retail establishments, such as butcher shops, which do not generally sell fruits and vegetables, do not meet the PACA definition of a retailer and therefore are not subject to this rule.

The law requires any person engaged in the business of supplying a covered commodity to a retailer to provide the retailer with the product's country of origin information. In addition, the law states the Secretary of Agriculture may conduct an audit of any person that prepares, stores, handles, or distributes a covered commodity for retail sale to verify compliance with the law and this regulation. Any person subject to such an audit shall provide the Secretary with verification of the country of origin of covered commodities. The 2008 Farm Bill states that records maintained in the course of the normal conduct of the business of such person, including animal health papers, import or customs documents, or producer affidavits, may serve as such verification. The law prohibits the Secretary from using a mandatory identification system to verify the country of origin of a covered commodity. Under the 2008 Farm Bill, the Secretary is prohibited from requiring the maintenance of additional records other than those maintained in the normal conduct of business. The law provides examples of existing certification programs that may be used to certify the country of origin of a covered commodity.

The 2008 Farm Bill also modified the enforcement provisions for both retailers and suppliers. Under the 2002 Farm Bill, civil penalties up to $10,000 per violation were specified for retailers and suppliers. Under the 2008 Farm Bill, civil penalties have been reduced to up to $1,000 for each violation. In addition, the 2008 Farm Bill specifies that the Secretary must provide retailers and suppliers with a 30-day period during which the retailer or supplier can take the necessary steps to comply with the law after receiving notice from the Secretary. Under the 2002 Farm Bill, only retailers were provided with this 30-day period. In addition, the 2008 Farm Bill states that the Secretary may fine a retailer or supplier, after providing notice and an opportunity for a hearing, only if the retailer or supplier has not made a good faith effort to comply with the law and continues to willfully violate the law. The law also encourages the Secretary to enter into partnerships with States with enforcement infrastructure to the extent possible to assist in the program's administration.

II. Summary of Changes From the Proposed Rule

As previously mentioned, the 2008 Farm Bill made a number of changes to the COOL provisions contained in the Act. These changes have been incorporated into this interim final rule as appropriate. In addition, the Agency has made other modifications for clarity and to reduce the burden on regulated parties where practicable as the added costs of implementing this rule will likely be passed on to consumers. Many of these changes were incorporated in the interim final rule for fish and shellfish that was published in the October 5, 2004, **Federal Register** (69 FR 89708). Thus, readers may find it

helpful to review the interim final rule for fish and shellfish for further discussions of some of the changes that were made from the proposed rule such as those changes made to the definition of a processed food item and to the recordkeeping provisions.

Further, enforcement of the interim final rule for fish and shellfish will be consistent with the statute as amended by the 2008 Farm Bill. Comments are specifically requested concerning the revisions to recordkeeping provisions made herein. Any comments received pursuant to this rulemaking, to the extent relevant, will be reviewed in connection with the continuing regulatory action on the mandatory COOL program for fish and shellfish. A summary of the changes made in this interim final rule is discussed below.

Definitions

The 2008 Farm Bill added muscle cuts and ground chicken and goat; pecans; macadamia nuts; and ginseng as covered commodities. Therefore, a definition for born in reference to chicken as well as definitions for chicken, ginseng, goat, ground chicken, and ground goat have been added for clarity. In addition, the definition of ''covered commodity'' has also been modified accordingly to include muscle cuts of beef (including veal), lamb, chicken, goat, and pork; ground beef, ground lamb, ground chicken, ground goat, and ground pork; perishable agricultural commodities; macadamia nuts; pecans; ginseng; and peanuts.

The definitions of ''canned'' and ''produced in any other country other than the United States'' have been deleted as they have been determined to be unnecessary.

A definition for ''commingled covered commodities'' and ''imported for immediate slaughter'' have been added for clarity.

The following definitions have been deleted as the requirements for labeling wild and farm-raised fish and shellfish covered commodities were promulgated in a separate action: ''farm-raised fish'', ''hatched'', ''processed (for fish and shellfish'', ''U.S. flagged vessel'', ''vessel flag'', ''waters of the United States'', and ''wild fish and shellfish''. In addition, other definitions such as ''covered commodity'', ''production step'', ''raised'', and ''United States country of origin'' have been modified to remove references to fish and shellfish.

The definition of ''ground beef'' has been modified to provide clarity and to expand the scope of ground beef items covered by this rule. Under this interim final rule, the term ''ground beef'' has the meaning given that term in 9 CFR 319.15(a), i.e., chopped fresh and/or frozen beef with or without seasoning and without the addition of beef fat as such, and containing no more than 30 percent fat, and containing no added water, phosphates, binders, or extenders, and also includes products defined by the terms ''hamburger'' in 9 CFR 319.15(b) and ''beef patties'' in 9 CFR 319.15(c). A full explanation of this change is discussed in the Comments and Responses section.

The definition of ''processed food item'' has been modified to provide additional clarity as to the types of retail items that are considered processed food items and are therefore exempt from labeling under this interim final rule. Based on the comments received on the proposed rule in which numerous commenters suggested that the scope of what is considered a covered commodity should be narrowed and because the Department was concerned about the burden of this rule on affected entities as the added costs of implementing this rule will likely be passed on to consumers, AMS is adopting the definition of a processed food item in this interim final rule that was promulgated in the interim final rule for fish and shellfish. Thus, under this interim final rule, items that are cooked, cured, smoked, and restructured would all be considered processed food items. Under the proposed rule, items that were cooked would have been required to be labeled. A full explanation of this change is discussed in the Comments and Responses section.

The definition of ''raised'' has also been modified to provide clarity. The term ''raised'' is defined in this interim final rule for the purpose of providing clarity with respect to the specific production steps specified in the law, born, raised, and slaughtered, and how the origin of covered commodities shall be labeled. This definition does not impact any other labeling claims subject to approval by FSIS.

Pursuant to the 2008 Farm Bill, the definition of ''United States country of origin'' has also been modified. Under this interim final rule, beef, pork, lamb, chicken, and goat derived from animals present in the United States on or before July 15, 2008, and once present in the United States, remained continuously in the United States, shall be considered of United States origin. The 2002 Farm Bill and thus the October 30, 2003, proposed rule, did not contain such a provision. This provision will help address the issue of the lack of origin information on some animals currently residing in the United States.

Country of Origin Notification for Muscle Cuts and Ground Meat

The October 30, 2003, proposed rule contained provisions for labeling covered commodities when the product entered the United States during the production process. In general, animals that were born and/or raised in country X and slaughtered in the United States were to be labeled as being imported from country X and identifying the production steps that occurred in the United States. The 2008 Farm Bill contains provisions on labeling covered commodities of multiple countries of origin. Under this interim final rule, if an animal was born, raised, and/or slaughtered in the United States and was not imported for immediate slaughter as defined in § 65.180, the origin of the resulting meat products derived from that animal may be designated as Product of the United States, Country X, and/or (as applicable) Country Y, where Country X and Country Y represent the actual or possible countries of foreign origin.

If an animal was imported into the United States for immediate slaughter as defined in § 65.180, the origin of the resulting meat products derived from that animal shall be designated as Product of Country X and the United States.

In both cases above, the origin declaration may include more specific information related to production steps provided records to substantiate the claims are maintained and the claim is consistent with other applicable Federal legal requirements.

Labeling Ground Meat Covered Commodities

The proposed rule contained provisions for labeling commingled products—including ground beef. However, the 2008 Farm Bill specifies how ground meat items shall be labeled.

Under this interim final rule, the declaration for ground beef, ground pork, ground lamb, ground goat, and ground chicken covered commodities shall list all countries of origin contained therein or that may be reasonably contained therein. Further, this interim final rule provides that when a raw material from a specific origin is not in a processor's inventory for more than 60 days, the country shall no longer be included as a possible country of origin. Under the proposed rule, the label for these products was required to include an alphabetical listing of the countries of origin for all raw materials contained therein.

Labeling Comingled Covered Commodities

For covered commodities other than meat items, this interim final rule, to a great extent, includes the labeling provisions for commingled covered commodities that were developed in the interim final rule for fish and shellfish based on comments received on the proposed rule. Most of the commenters requested greater flexibility in labeling these types of products. Other commenters expressed concern as to whether listing the countries in alphabetical order is acceptable under FDA and CBP regulations. For a more complete discussion of the rationale for this change, readers are invited to review the interim final rule for fish and shellfish (69 FR 59708), which is posted on the AMS Web site at *http://www.ams.usda.gov/AMSv1.0/*. Further, changes are made in this regulation to make clear that in those instances in which CBP marking regulations apply pursuant to 19 CFR part 134, this regulation does not impose any additional marking requirements. Accordingly, under this interim final rule, for imported covered commodities that are commingled with covered commodities (of the same type) sourced from a different origin the declaration shall indicate the countries of origin in accordance with existing CBP marking regulations (19 CFR part 134).

Markings

With regard to markings, in addition to the change made by the 2008 Farm Bill with respect to State, region, and locality labels, which is further discussed below, the Agency has made several changes to provide for increased flexibility in labeling. In general, these changes mirror the changes that were made to the marking provisions contained in the interim final rule for fish and shellfish as a result of comments received on the proposed rule. Many commenters requested the use of check boxes to convey origin information. Other commenters requested that bulk commodities should be allowed to be commingled in bins as long as the signage indicates the countries of origin of the contents of the bin. Numerous other commenters recommended that State and regional designations should be accepted in lieu of country of origin. For a more complete discussion of the relevant comments, readers are invited to review the interim final rule for fish and shellfish.

Accordingly, under this interim final rule, the declaration of the country of origin of a product may be in the form of a check box provided it is in conformance with other Federal labeling laws. Also, under this final rule, a bulk container (e.g., display case, shipper, bin, carton, and barrel), used at the retail level to present product to consumers, may contain a covered commodity from more than one country of origin provided all possible origins are listed. Under the proposed rule, the use of check boxes was not expressly allowed and covered commodities from more than one origin that were offered for sale in a bulk container were required to be individually labeled.

Under the proposed rule, State or regional label designations were not permitted in lieu of country of origin. However, the 2008 Farm Bill, and thus this interim final rule, expressly authorize the use of State, regional, or locality label designations in lieu of country of origin for perishable agricultural commodities, peanuts, pecans, ginseng, and macadamia nuts.

Recordkeeping

The 2008 Farm Bill made changes to the recordkeeping provisions of the Act. Specifically, the 2008 Farm Bill states that records maintained in the course of the normal conduct of the business of such person, including animal health papers, import or customs documents, or producer affidavits, may serve as such verification. Under the 2008 Farm Bill, the Secretary is prohibited from requiring the maintenance of additional records other than those maintained in the normal conduct of business. In addition to the changes made as a result of the 2008 Farm Bill, other changes have been made to reduce the recordkeeping burden. In general, these changes, to a great extent, include the changes that were made to the recordkeeping provisions contained in the interim final rule for fish and shellfish as a result of comments received on the proposed rule. The majority of the commenters recommended shorter retention times for both retailer and supplier records. Other commenters expressed concern that the preamble for the proposed rule provided no explanation of the records that would be necessary to establish the chain of custody of a product. For a more complete discussion of the relevant comments, readers are invited to review the interim final rule for fish and shellfish. These changes include the removal of the store-level recordkeeping requirement, a reduction in the length of time that records must be maintained, the removal of the requirement for a unique identifier, and revisions to the recordkeeping requirements for pre-labeled products.

With respect to establishing the chain of custody of a product, in response to comments received, the Agency has deleted this language from the rule. Any person engaged in the business of supplying a covered commodity to a retailer, whether directly or indirectly, must maintain records to establish and identify the immediate previous source and immediate subsequent recipient of a covered commodity for a period of 1 year from the date of the transaction. Under the proposed rule, records would have been required to be kept for 2 years.

For retailers, this rule requires records and other documentary evidence relied upon at the point of sale by the retailer to establish a covered commodity's country(ies) of origin must be maintained for one year from the date the origin declaration is made at retail and, upon request, provided to any duly authorized representatives of USDA within 5 business days of the request. Under the proposed rule, retailers were required to have maintained these records at the retail store for 7 days following the sale of the product. For pre-labeled products, the rule provides that the label itself is sufficient evidence on which the retailer may rely to establish a product's origin. The proposed rule would not have provided for this method of substantiation. The rule now requires that records identify the covered commodity, the supplier, and for products that are not pre-labeled, the country of origin information. This information must be maintained for a period of 1 year from the date the origin designations are made at retail. Under the proposed rule, these records would have been required to be maintained for 2 years.

Accordingly, under this interim final rule, upon request by USDA representatives, suppliers and retailers subject to this subpart shall make available to USDA representatives, records maintained in the normal course of business that verify an origin claim. Such records shall be provided within 5 business days of the request and may be kept in any location.

USDA continues to look for ways to minimize the burden associated with this rule. Therefore, under this interim final rule, in addition to relying on producer affidavits to initiate an origin claim, slaughter facilities that slaughter animals that are part of a National Animal Identification System (NAIS) compliant system or other recognized official identification system (e.g., Canadian official system, Mexico official system) may also rely on the presence of an official ear tag and/or the presence of any accompanying animal

markings (i.e., ''Can'', ''M''), as applicable, on which to base their origin claims. This provision also applies to such animals officially identified as a group lot.

Responsibilities of Retailers and Suppliers

With regard to the ''safe harbor'' language contained in the proposed rule, which allows retailers and suppliers to rely on the information provided unless they could have been reasonably expected to have knowledge otherwise, based on comments received, this ''safe harbor'' language has been removed from this interim final rule. The commenters contend that because the statute states that retailers are not subject to fines unless the Secretary determines they have willfully violated the statute, the standard of willfulness is a higher bar to liability than the standard of negligence that is encompassed in the reasonable reliance standard utilized in the ''liability shield.'' A complete discussion is contained in the Comments and Responses section of this interim final rule.

Highlights of This Interim Final Rule

Covered Commodities

The term ''covered commodity'' includes: Muscle cuts of beef, lamb, pork, chicken, and goat; ground beef, ground lamb, ground pork, ground chicken, and ground goat; perishable agricultural commodities (fresh and frozen fruits and vegetables); peanuts; pecans; ginseng; and macadamia nuts.

Exemption for Food Service Establishments

Under this interim final rule, food service establishments are exempt from COOL labeling requirements. Food service establishments are restaurants, cafeterias, lunch rooms, food stands, saloons, taverns, bars, lounges, or other similar facilities operated as an enterprise engaged in the business of selling food to the public. Similar food service facilities include salad bars, delicatessens, meal preparation stations in which the retailer sets out ingredients for different meals and consumers assemble the ingredients into meals to take home, and other food enterprises located within retail establishments that provide ready-to-eat foods that are consumed either on or outside of the retailer's premises.

Exclusion for Ingredient in a Processed Food Item

Items are excluded from labeling under this regulation when a covered commodity is an ingredient in a processed food item. Under this interim final rule, a ''processed food item'' is defined as: A retail item derived from a covered commodity that has undergone specific processing resulting in a change in the character of the covered commodity, or that has been combined with at least one other covered commodity or other substantive food component (e.g., chocolate, breading, tomato sauce), except that the addition of a component (such as water, salt, or sugar) that enhances or represents a further step in the preparation of the product for consumption, would not in itself result in a processed food item. Specific processing that results in a change in the character of the covered commodity includes cooking (e.g., frying, broiling, grilling, boiling, steaming, baking, roasting), curing (e.g., salt curing, sugar curing, drying), smoking (cold or hot), and restructuring (e.g., emulsifying and extruding). Examples of items excluded from country of origin labeling include teriyaki flavored pork loin, meatloaf, roasted peanuts, breaded chicken tenders, fruit medley, mixed vegetables, and a salad mix that contains lettuce and carrots and/or salad dressing.

Labeling Covered Commodities of United States Origin

The law prescribes specific criteria that must be met for a covered commodity to bear a ''United States country of origin'' declaration. Therefore, covered commodities may be labeled as having a United States origin if the following specific requirements are met:

(a) Beef, pork, lamb, chicken, and goat—covered commodities must be derived from animals exclusively born, raised, and slaughtered in the United States; from animals born and raised in Alaska or Hawaii and transported for a period of time not more than 60 days through Canada to the United States and slaughtered in the United States; or from animals present in the United States on or before July 15, 2008, and once present in the United States, remained continuously in the United States.

(b) Perishable agricultural commodities, peanuts, pecans, ginseng, and macadamia nuts—covered commodities must be from products exclusively produced in the United States.

Labeling Muscle Cut Covered Commodities of Multiple Countries of Origin (That Includes the United States)

Under this interim final rule, if an animal was born, raised, and/or slaughtered in the United States and was not imported for immediate slaughter as defined in § 65.180, the origin of the resulting meat products derived from that animal may be designated as Product of the United States, Country X, and/or (as applicable) Country Y, where Country X and Country Y represent the actual or possible countries of foreign origin.

If an animal was imported into the United States for immediate slaughter as defined in § 65.180, the origin of the resulting meat products derived from that animal shall be designated as Product of Country X and the United States.

In both cases above, the origin declaration may include more specific information related to production steps provided records to substantiate the claims are maintained and the claim is consistent with other applicable Federal legal requirements.

Labeling Imported Covered Commodities

Under this interim final rule, an imported covered commodity for which origin has already been established as defined by this law (e.g., born, raised, slaughtered or grown) and for which no production steps have occurred in the United States shall retain its origin as declared to U.S. Customs and Border Protection (CBP) at the time the product enters the United States, through retail sale.

Covered commodities imported in consumer-ready packages are currently required to bear a country of origin declaration on each individual package under the Tariff Act of 1930 (Tariff Act). This interim final rule does not change these requirements.

Labeling Commingled Covered Commodities

In this interim final rule, a commingled covered commodity is defined as a single type of covered commodity (e.g., frozen peas), presented for retail sale in a consumer package, that has been prepared from raw material sources having different origins. Further, a commingled covered commodity does not include ground meat products. If the retail product contains two different types of covered commodities (e.g., peas and carrots), it is considered a processed food item and is not subject to mandatory COOL.

In the case of perishable agricultural commodities, peanuts, pecans, ginseng, and macadamia nuts, for imported covered commodities that have not subsequently been substantially transformed in the United States that are commingled with imported and/or United States origin commodities, the declaration shall indicate the countries

of origin for all covered commodities in accordance with CBP marking regulations (19 CFR part 134). For example, a bag of frozen peas that were sourced from France and India is currently required under CBP regulations to be marked with that origin information on the package.

Defining Country of Origin for Ground Meat Products

The law states that the origin declaration for ground beef, ground pork, ground lamb, ground goat, and ground chicken covered commodities shall list the countries of origin contained therein or shall list the reasonably possible countries of origin. Therefore, under this interim final rule, when a raw material from a specific origin is not in a processor's inventory for more than 60 days, the country shall no longer be included as a possible country of origin. This does not mean that labels must change every 60 days. Labels containing the applicable countries (e.g., Country X, Y, Z) may extend beyond a given 60-day period depending on how long raw materials from those countries are actually in inventory. In the event of a supplier audit by USDA, records kept in the normal course of business should provide the information necessary to verify the origin claim.

Remotely Purchased Products

For sales of a covered commodity in which the customer purchases a covered commodity prior to having an opportunity to observe the final package (e.g., Internet sales, home delivery sales, etc.) the retailer may provide the country of origin notification either on the sales vehicle or at the time the product is delivered to the consumer.

Markings

Under this interim final rule, the country of origin declaration may be provided to consumers by means of a label, placard, sign, stamp, band, twist tie, pin tag, or other clear and visible sign on the covered commodity or on the package, display, holding unit, or bin containing the commodity at the final point of sale to consumers. In general, abbreviations are not acceptable. Only those abbreviations approved for use under CBP rules, regulations, and policies, such as ''U.K.'' for ''The United Kingdom of Great Britain and Northern Ireland'', ''Luxemb'' for Luxembourg, and ''U.S.'' for the ''United States'' are acceptable. The declaration of the country of origin of a product may be in the form of a statement such as ''Product of USA,'' ''Produce of the USA'', or ''Grown in Mexico''; may only contain the name of the country such as ''USA'' or ''Mexico''; or may be in the form of a check box provided it is in conformance with CBP marking regulations and other Federal labeling laws (i.e., FDA, FSIS). For example, CBP marking regulations (19 CFR part 134) specifically require the use of the words ''product of'' in certain circumstances. The adjectival form of the name of a country may be used as proper notification of the country of origin of imported commodities provided the adjectival form of the name does not appear with other words so as to refer to a kind or species of product. Symbols or flags alone may not be used to denote country of origin. The labeling requirements under this rule do not supersede any existing Federal legal requirements, unless otherwise specified, and any country of origin designation must not obscure or intervene with other labeling information required by existing regulatory requirements.

For domestic and imported perishable agricultural commodities, macadamia nuts, peanuts, pecans, and ginseng, State, regional, or locality label designations are acceptable in lieu of country of origin labeling.

In order to provide the industry with as much flexibility as possible, this rule does not contain specific requirements as to the exact placement or size of the country of origin declaration. However, such declarations must be legible and conspicuous, and allow consumers to find the country(ies) of origin easily and read it without strain when making their purchases, and provided that existing Federal labeling requirements must be followed. For example, the country of origin declaration may be located on the information panel of a package of frozen produce as consumers are familiar with such location for displaying nutritional and other required information. Likewise, in the case of store overwrap and other similar type products, which is the type of packaging used for fresh meat and poultry products, the information panel would also be an acceptable location for the origin declaration as this is a location that is currently utilized for providing other Federally-mandated labeling information (i.e., safe handling instructions, nutrition facts, and ingredients statement). However, to the extent practicable, the Agency encourages retailers and suppliers to place this information on the front of these types of packages, also known as the principal display panel, so it will be readily apparent to consumers.

Recordkeeping Requirements and Responsibilities

The law states that the Secretary may conduct an audit of any person that prepares, stores, handles, or distributes a covered commodity for retail sale to verify compliance. As such, records maintained in the normal course of business that verify origin declarations are necessary in order to provide retailers with credible information on which to base origin declarations.

Under this interim final rule, any person engaged in the business of supplying a covered commodity to a retailer, whether directly or indirectly (i.e., growers, distributors, handlers, packers, and processors, etc.), must make available information to the subsequent purchaser about the country(ies) of origin of the covered commodity. This information may be provided either on the product itself, on the master shipping container, or in a document that accompanies the product through retail sale provided it identifies the product and its country(ies) of origin.

Any person engaged in the business of supplying a covered commodity to a retailer, whether directly or indirectly, must maintain records to establish and identify the immediate previous source (if applicable) and immediate subsequent recipient of a covered commodity for a period of 1 year from the date of the transaction.

In addition, the supplier of a covered commodity that is responsible for initiating a country of origin declaration, which in the case of beef, lamb, pork, chicken, and goat is the slaughter facility, must possess or have legal access to records that are necessary to substantiate that claim. In the case of beef, lamb, chicken, goat, and pork, a producer affidavit shall be considered acceptable evidence on which the slaughter facility may rely to initiate the origin claim, provided it is made by someone having first-hand knowledge of the origin of the animal(s) and identifies the animal(s) unique to the transaction.

USDA continues to look for ways to minimize the burden associated with this rulemaking. Therefore, slaughter facilities that slaughter animals that are part of a National Animal Identification System (NAIS) compliant system or other recognized official identification system (e.g., Canadian official system, Mexico official system) may also rely on the presence of an official ear tag and/or the presence of any accompanying animal markings (i.e., ''Can'', ''M''), as applicable, on which to base their origin claims. This would also include such

animals officially identified as a group lot.

For an imported covered commodity, the importer of record as determined by CBP, must ensure that records: Provide clear product tracking from the United States port of entry to the immediate subsequent recipient and accurately reflect the country(ies) of origin of the item as identified in relevant CBP entry documents and information systems; and maintain such records for a period of 1 year from the date of the transaction.

Under this interim final rule, retailers also have recordkeeping responsibilities. Records and other documentary evidence relied upon at the point of sale by the retailer to establish a covered commodity's country(ies) of origin must be maintained for one year from the date the origin declaration is made at retail. Upon request, these records must be provided to any duly authorized representatives of USDA within 5 business days of the request and may be maintained in any location. For pre-labeled products (i.e., labeled by the manufacturer/first handler) the label itself is sufficient evidence on which the retailer may rely to establish the product's origin. Pre-labeled products are those covered commodities that are labeled for country of origin by the firm or entity responsible for making the initial claim or by a further processor or repacker (i.e., firms that receive bulk products and package the products as covered commodities in a form suitable for the retailer). The country of origin information of pre-labeled covered commodities must be legibly printed on the shipping container, immediate container, or consumer ready package. In addition to indicating country of origin information, pre-labeled products must contain sufficient supplier information to allow USDA to trace-back the product to the supplier initiating the claim. Records that identify the covered commodity, the supplier, and for products that are not pre-labeled, the country of origin information must be maintained for a period of 1 year from the date the origin declaration is made at retail.

Enforcement

The law encourages the Secretary to enter into partnerships with States to the extent practicable to assist in the administration of this program. As such, USDA has entered into partnerships with States that have enforcement infrastructure to conduct retail compliance reviews.

Routine compliance reviews may be conducted at retail establishments and associated administrative offices, and at supplier establishments subject to these regulations. USDA will coordinate the scheduling and determine the procedures for compliance reviews. Only USDA will be able to initiate enforcement actions against a person found to be in violation of the law. USDA may also conduct investigations of complaints made by any person alleging violations of these regulations when the Secretary determines that reasonable grounds for such investigation exist.

Retailers and suppliers, upon being notified of the commencement of a compliance review, must make all records or other documentary evidence material to this review available to USDA representatives within 5 business days of receiving a request and provide any necessary facilities for such inspections.

The law contains enforcement provisions for both retailers and suppliers that include civil penalties of up to $1,000 for each violation. For retailers and persons engaged in the business of supplying a covered commodity to a retailer (suppliers), the law states that if the Secretary determines that a retailer or supplier is in violation of the Act, the Secretary must notify the retailer or supplier of the determination and provide the retailer or supplier with a 30-day period during which the retailer or supplier may take necessary steps to comply. If upon completion of the 30-day period the Secretary determines the retailer or supplier has (1) not made a good faith effort to comply and (2) continues to willfully violate the Act, after providing notice and an opportunity for a hearing, the retailer or supplier may be fined not more than $1,000 for each violation.

In addition to the enforcement provisions contained in the Act, statements regarding a product's origin must also comply with other existing Federal statutes. For example, the Federal Food, Drug, and Cosmetic Act prohibits labeling that is false or misleading. In addition, for perishable agricultural commodities, mislabeling country of origin is also in violation of PACA misbranding provisions. Thus, inaccurate country of origin labeling of covered commodities may lead to additional penalties under these statutes as well.

With regard to the voluntary use of NAIS compliant tags on which to base origin claims, 9 CFR 71.22 prohibits the removal of official identification devices except at the time of slaughter.

Comments and Responses

On October 30, 2003, AMS published the proposed rule for the mandatory COOL program (68 FR 61944) with a 60-day comment period. On December 22, 2003, AMS published a notice extending the comment period (68 FR 71039) an additional 60 days. AMS received over 5,600 timely comments from consumers, retailers, foreign governments, producers, wholesalers, manufacturers, distributors, members of Congress, trade associations and other interested parties. The majority of the comments received were from consumers expressing support for the requirement to label the method of production of fish and shellfish as either wild and/or farm-raised. Numerous other comments related to the definition of a processed food item, the recordkeeping requirements for both retailers and suppliers, and the enforcement of the program. In addition, over 100 late comments were received that generally reflected the substance of the timely comments received. To the extent that these comments applied to fish and shellfish covered commodities, these comments have already been addressed in the interim final rule for fish and shellfish (69 FR 59708).

On June 20, 2007, AMS reopened the comment period for the proposed rule for all covered commodities (72 FR 33917). AMS received over 721 comments from consumers, retailers, foreign governments, producers, wholesalers, manufacturers, distributors, members of Congress, trade associations and other interested parties. The majority of the comments received were from consumers expressing support for mandatory COOL for the remaining covered commodities. Numerous comments were received that provided insights and suggestions relating to the definitions for ''processed food item,'' ''blended products,'' ''retailer,'' and ''ground beef.'' Several foreign governments expressed concern that the law itself may not be consistent with the World Trade Organization or North American Free Trade Agreement obligations of the United States. Other commenters pointed out that COOL provides no food safety benefit to consumers. Some commenters expressed concerns that poultry and food service establishments are exempt from COOL regulations. Several commenters discussed the challenges and possible solutions for labeling country of origin when products have entered the United States during the production process. Many commenters requested an implementation period to allow clearing from channels of

commerce those preexisting animals and commodities for which accurate labeling would be difficult.

Any comments received on the October 30, 2003, proposed rule that were not addressed previously in the interim final rule for fish and shellfish, as well as any new comments received in response to the June 20, 2007, comment reopening, will be addressed in this rule.

On October 5, 2004, AMS published the interim final rule for fish and shellfish (69 FR 59708) with a 90-day comment period. On December 28, 2004, AMS published a notice extending the comment period (69 FR 77609) an additional 60 days. On November 27, 2006, the comment period was reopened on the cost and benefit aspects of the interim final rule (71 FR 68431). AMS received over 192 comments from consumers, retailers, foreign governments, producers, wholesalers, manufacturers, distributors, members of Congress, trade associations and other interested parties. The majority of the comments received were from consumers expressing support for the requirement to label fish and shellfish with the country of origin and method of production as either wild and/or farm-raised, and to extend mandatory COOL to the remaining covered commodities. Most of the comments did not address the specific question of the rule's costs and benefits. A limited number of the comments did relate to the costs and benefits of the documentation and recordkeeping requirements of the law. Some commenters noted no increased sales or demand for seafood as a result of COOL. Several commenters provided evidence regarding the costs of compliance with the interim final rule covering fish and shellfish. Other commenters cited academic and Government Accountability Office studies to argue that USDA overestimated the costs to implement systems to meet COOL requirements, and that the true costs to industry will be much lower than those projected by the economic impact analysis contained in the interim final rule for fish and shellfish. To the extent that these comments apply to the overall costs and benefits of mandatory COOL for the remaining covered commodities, they will be addressed herein.

When the proposed rule was published on October 30, 2003, the regulatory provisions were all proposed to be contained in a new part 60 of Title 7 of the Code of Federal Regulations. Under this interim final rule, the regulatory provisions for the covered commodities other than fish and shellfish will appear at 7 CFR part 65. For the ease of the reader, the discussion of the comments will refer to the initial regulatory numbering scheme. The numbering scheme for the regulatory provisions in this interim final rule is different and therefore may not align with the proposed rule.

Definitions

Born

Summary of Comments: One commenter recommended that a new definition be added that would define the term ''born'' in the case of:

(a) Beef, pork, and lamb: The country in which cattle, hogs, and sheep were birthed on or after September 30, 2004.

(b) Cattle, hogs, and sheep: All cattle, hogs, and sheep birthed prior to September 30, 2004, and residing within the United States on September 30, 2004, shall be deemed to be born in the United States, except those identified as foreign (through various means).

Agency Response: The implementation date for covered commodities other than fish and shellfish was delayed until September 30, 2008. The 2008 Farm Bill amended section 282(a)(2) of the Act such that beef, lamb, pork, chicken, and goat can be designated as having a United States origin if derived from an animal that was present in the United States on or before July 15, 2008, and once present in the United States, remained continuously in the United States. Accordingly, the issue raised in the comment has been addressed by the 2008 Farm Bill amendment, and this rule reflects that statutory change.

Covered Commodity

Summary of Comments: Numerous commenters suggested that the definition of covered commodity should be amended to include poultry.

Agency Response: The 2008 Farm Bill amended section 281(2)(A) of the Act to include chicken as a covered commodity as well as goat, pecans, ginseng, and macadamia nuts. Therefore, the term ''covered commodity'' has been defined in this interim final rule as ''muscle cuts of beef, lamb, chicken, goat, and pork; ground beef, ground lamb, ground chicken, ground goat, and ground pork; perishable agricultural commodities; peanuts; pecans; ginseng; and macadamia nuts.'' Accordingly, the commenters' concerns regarding adding poultry as a covered commodity have been addressed by the 2008 Farm Bill.

Food Service Establishment

Summary of Comments: Several commenters stated their opposition to the labeling exemption for food service establishments and pointed out that this provision will result in a substantial amount of product being unlabeled for country of origin. One commenter encouraged USDA to retain the food service establishment definition and to add meal preparation services as another example.

Agency Response: Section 282(b) of the Act provides for an exemption for food service establishments. Therefore, this interim final rule retains the provision for an exemption for food service establishments. In addition, language describing meal preparation stations as another example of a food service establishment has been added to the preamble. Accordingly, these recommendations have been adopted in part.

Ground Beef

Summary of Comments: Several commenters suggested that the definition of ground beef be modified so that all beef products that are ground would be covered regardless of the amount of beef fat, and regardless of whether it contains added water, phosphates, binders, or extenders.

Agency Response: In the October 30, 2003, proposed rule, the Agency defined the term ''ground beef'' as having the meaning given the term in 9 CFR 319.15(a), i.e., chopped fresh and/or frozen beef with or without seasoning and without the addition of beef fat as such, and containing no more than 30 percent fat, and containing no added water, phosphates, binders, or extenders. The Agency has considered the comments received and agrees that the definition of ground beef contained within the proposed rule was too narrow as it would have excluded products such as hamburger and potentially beef patties. Consumers likely would have been confused as to why certain ground beef products were labeled with country of origin while others were not. Accordingly, AMS has revised the definition of ground beef such that ''ground beef'' has the meaning given that term in 9 CFR 319.15(a), i.e., chopped fresh and/or frozen beef with or without seasoning and without the addition of beef fat as such, and containing no more than 30 percent fat, and containing no added water, phosphates, binders, or extenders, and also includes products defined by the terms ''hamburger'' in 9 CFR 319.15(b) and ''beef patties'' in 9 CFR 319.15(c). This revised definition will result in the inclusion of hamburger and beef patties by allowing for the addition of beef fat and water. However, ground beef, hamburger, and beef

patties that contain seasonings and/or other ingredients such as binders or extenders would meet the definition of a processed food item and would therefore not be covered under this rule.

Processed Food Item

Summary of Comments: AMS received numerous comments on the definition of a processed food item. Several commenters expressed the opinion that the number of exemptions allowed under the processed food item definition should be substantially limited so as to allow for labeling of the maximum number of commodities as possible. Some commenters offered specific recommendations as to what should not be included as a processing step such as marinating, breading, canning, smoking, curing, cooking, dividing into portions, etc. Some commenters offered specific recommendations as to what should be included as a processing step such as freezing, removing inedible portions (such as peeling, coring, and chopping a fresh pineapple), restructuring, cooking, curing, and smoking. With respect to recognizing freezing as a processing step, one commenter provided examples of other regulations administered by AMS that recognize freezing as a processing step. The commenter contends that these regulations have established an administrative precedent and a departure from such precedent would not be legally supported. The commenter also contends that imported frozen products are already required to be labeled with the country of origin under the Tariff Act and that requiring the labeling of these products under COOL would be duplicative. Finally, the commenter contends that there was no legislative intent for frozen foods to fall under the COOL labeling requirements.

Several commenters requested that USDA clarify the types of products that would be considered processed food items under the second part of the definition. Some commenters stated that products such as hamburger, beef patties, meatballs, meat loaves, and fabricated steak should be defined as processed food items. Another commenter suggested that ground beef, ground lamb, and ground pork should be defined as processed food items. Several commenters suggested that roasted, dry roasted, and honey roasted peanuts should be defined as processed food items. Several commenters concurred with the agency's definition as published in the interim final rule for fish and shellfish.

One commenter encouraged USDA to retain the definition as published in the fish and shellfish rule, but recognize that processing for perishable agricultural commodities is different than for the other covered commodities. The commenter pointed out that much value added processing occurs with respect to produce and stated that peeling, coring, chopping, and packaging a fresh pineapple for consumers changes the character of the covered commodity from a bristly fruit to a ready-to-eat product. The commenter recommended that USDA should recognize that perishable agricultural commodities that retailers prepare and package for consumers immediate consumption should be considered processed food items.

Other commenters expressed general concern about the proposed definition, but did not offer any alternatives. Other commenters expressed concern that the concept of substantial transformation, which is the basis for determining origin under CBP regulations, the World Trade Organization's Rules of Origin, and the Codex General Standard for the Labeling of Prepackaged Food, is being overwritten. Another commenter expressed their opinion that the addition of salt or sugar represents a change in nutritional properties and therefore should represent a processing step thereby creating a processed food item.

Agency Response: In the October 30, 2003, proposed rule, the term ''processed food item'' was defined as a retail item derived from a covered commodity that has undergone a physical or chemical change, and has a character that is different from that of the covered commodity; or a retail item derived from a covered commodity that has been combined with other covered commodities or other substantive food components. The Agency also contemplated a number of alternative definitions. In promulgating the definition of a processed food item in the interim final rule for fish and shellfish, the Agency reviewed and responded to all of the comments received on the October 30, 2003, proposed rule. The majority of the comments received argued for a broader definition of a processed food item such that more products would be excluded from labeling. Accordingly, under the interim final rule for fish and shellfish, the definition of a processed food item was modified such that cooked products, breaded products, and items that have been imparted with a particular flavor are all considered processed food items. For a more complete discussion of these comments and the Agency's responses, readers are invited to review the interim final rule for fish and shellfish.

The Agency believes the definition of a processed food item contained in the interim final rule for fish and shellfish has established a bright line standard in terms of what products are covered by the regulation. Therefore, under this interim final rule, the definition of a processed food item is the same as that which was published in the interim final rule for fish and shellfish (69 FR 89708). Further, to provide additional guidance to the industry, the Agency has added additional examples of the types of products that would be excluded in the Questions and Answers section of this rule.

With respect to the issue of substantial transformation, the law specifically defines the criteria for a covered commodity to be labeled as having a United States country of origin. Imported covered commodities do not generally meet this criteria and, therefore, may not bear a declaration that identifies the United States as the sole country of origin.

With regard to excluding ground meat products, the Act defines the term ''covered commodity'' to specifically include ground beef, ground pork, ground lamb, ground goat as well as ground chicken. Thus, these commodities must be labeled under this regulation. However, items such as meatballs, meat loaf, and similar items that contain seasonings and/or binders, would not meet the definition of ''ground beef'' as defined in this regulation. With regard to fabricated steak, this product is restructured and therefore would be considered a processed food item under this interim final rule.

With respect to considering freezing as a processing step, freezing is clearly a method of preservation and does not change the character of the product. In addition, in defining the term perishable agricultural commodity, Congress referenced the definition for this term under the Perishable Agricultural Commodities Act of 1930 (PACA). Under PACA, the term perishable agricultural commodity means ''any of the following, whether or not frozen or packed in ice * * *'' Therefore, it is clear that frozen fruits and vegetables are specifically included as covered commodities under the statute. As the commenter points out, many imported products (in consumer-ready packages) are already required to be labeled under the Tariff Act. This interim final rule does not change these requirements.

With respect to the recommendation to recognize that perishable agricultural

commodities that retailers prepare and package for consumers' immediate consumption should be considered processed food items, many of these preparations must be done prior to a product being ready for consumption. For example, a consumer would not eat a pineapple that wasn't peeled, cored, and sliced and/or chopped. Such processing thus does not change the character of the product but rather prepares it for consumption. This is similar to the process of peeling shrimp. A consumer would not eat shrimp prior to it being peeled and accordingly, peeling shrimp is not considered a processing step under the interim final rule for fish and shellfish.

With respect to roasted, dry roasted, and honey roasted peanuts, because these items are all cooked, under the definition of a processed food item in this interim final rule, these products are excluded from labeling. With regard to excluding items that contain added salt or sugar, the Agency believes the addition of these ingredients merely represent a further step in the preparation of the product for consumption and do not result in a change of character of the covered commodity. Therefore, this recommendation is not adopted.

Retailer

Summary of comments: Several commenters were concerned that the definition of a retailer in the proposed rule does not conform to what the average consumer thinks of as a retailer because it excludes stores that do not sell fruits and vegetables such as fish markets, meat markets, small green grocers, and convenience stores. These commenters urged USDA to resolve any ambiguities surrounding the definition in a way that maximizes the number of food items and establishments subject to mandatory COOL. Another commenter noted that Congress intended to impose the new labeling requirements on sales conducted by a certain class of business entities (i.e., PACA retailers) but not on all retail sales of covered commodities. They further stated that any person that primarily sells food in wholesale or in bulk to independent businesses (e.g., restaurants and other food service establishments) should be exempt from COOL.

Agency Response: The law specifically defines the term retailer as having the meaning given that term in section 1(b) of PACA. Accordingly, fish markets or any other retail entities that either invoice fruits and vegetables at a level below the $230,000 threshold or do not sell any fruits and vegetables at all are not included. Likewise, the Agency believes this definition clearly indicates that covered commodities sold by wholesalers to restaurants and other food service establishments are not covered by COOL. Accordingly, no modification to the definition of a retailer has been made.

Slaughter

Summary of Comments: In the proposed rule, the Agency specifically invited comments on the use of alternative terms for the term ''slaughtered.'' Numerous commenters suggested alternatives including abattoired, processed, harvested, prepared, and initial processing.

Agency Response: The Agency believes that the alternative term ''harvested'' as suggested by several of the commenters is an acceptable alternative for the term ''slaughtered'' that will be readily understood by consumers. Accordingly, this rule has been modified to allow the use of this term in lieu of the term ''slaughtered''.

Country of Origin Notification

Exemption for Food Service Establishments

Summary of Comments: Several commenters were not in favor of the exemption for food service establishments as it would limit the information available to consumers.

Agency Response: The Act expressly states the exemption of food service establishments. Therefore, this exemption is retained in this regulation.

Labeling Covered Commodities of United States Origin

Summary of Comments: One commenter supported labeling only those products derived from animals specifically born, raised, and processed in the United States as eligible for the ''product of the United States'' designation. This commenter opposed an all-inclusive label such as ''product of the United States, Canada, or Mexico'' when the commodity meets the specific qualifications for the ''product of the United States'' label. Another commenter advocated that the ''United States origin'' designation should only be available for peanut products in which the peanuts have been grown and harvested in the United States and have not been substantially transformed outside the United States. Other commenters supported a presumption of United States origin in which the absence of foreign import markings should be used to identify livestock exclusively born, raised, and processed in the United States. One commenter suggested that in the case of the covered commodities beef, pork, lamb, ground beef, ground pork, and ground lamb, the retail product should be labeled as ''product of the United States'' if in fact that product was produced in the United States.

Agency Response: The law expressly states the criteria for products to be considered of United States origin, which are included in the definition of this term as stated in § 65.260 of this interim final rule. The specific requirements for covered commodities are as follows: Perishable agricultural commodities, pecans, ginseng, peanuts, and macadamia nuts—covered commodities must be produced in the United States; beef, lamb, pork, chicken, and goat—covered commodities must be derived exclusively from animals (1) born, raised, and slaughtered in the United States (including animals born and raised in Alaska and Hawaii and transported for a period of time not more than 60 days through Canada to the United States and slaughtered in the United States); or (2) present in the United States on or before July 15, 2008, and once present in the United States, remained continuously in the United States. The regulation also states that covered commodities further processed or handled in a foreign country after meeting the requirements to be labeled as United States origin (as defined in § 65.260) may bear the declaration that identifies the United States as the sole country of origin at retail provided the identity of the product is maintained along with records to substantiate the origin claims and the claim is consistent with other applicable Federal legal requirements. Thus, peanuts grown in the United States and processed in another country such that a substantial transformation does not occur are still eligible to bear a United States origin declaration.

In the case of all inclusive labels such as ''Product of the United States, Canada, or Mexico'', the 2008 Farm Bill provided further direction on country of origin labeling for meat covered commodities. These changes include additional provisions concerning labeling meat covered commodities that have multiple countries of origin. Under this interim final rule, if an animal was born, raised, and/or slaughtered in the United States and was not imported for immediate slaughter as defined in § 65.180, the origin of the resulting meat products derived from that animal may be designated as Product of the United States, Country X, and/or (as applicable) Country Y, where Country X and Country Y represent the actual or possible countries of foreign origin. In addition, the origin declaration may include more specific information

related to production steps provided records to substantiate the claims are maintained and the claim is consistent with other applicable Federal legal requirements.

With regard to allowing for presumption of United States origin, the law also states that ''Any person engaged in the business of supplying a covered commodity to a retailer shall provide information to the retailer indicating the country of origin of the covered commodity.'' Accordingly, presumption of United States origin is not authorized under the statute.

Labeling Imported Covered Commodities That Have Been Substantially Transformed in the United States

Summary of Comments: Two commenters supported the provisions contained in the interim final rule for fish and shellfish for labeling products that have been imported from country x and substantially transformed in the United States to be labeled as ''from country x, processed in the United States'' and recommended this provision also be used for other covered commodities. One commenter opposed requiring further itemization of exact production steps that occurred in the United States or in the foreign country. One commenter supported a label that expresses each country's specific role in the production of a product.

Agency Response: The 2008 Farm Bill contains labeling provisions for the following categories: United States country of origin, multiple countries of origin, imported for immediate slaughter, foreign country of origin, as well as for labeling ground products. Accordingly, this interim final rule contains labeling provisions for these categories in accordance with the law. A complete discussion on how covered commodities should be labeled is contained in this regulation in the section entitled ''Highlights of this Regulation''.

Blended Products

Summary of Comments: Several commenters stated that the provision for labeling blended products under the proposed rule, which required an alphabetical listing of countries contained therein and required facilities to document the origin of a product was separately tracked, was excessively costly. Commenters supported language in the interim final rule for fish and shellfish, which stated ''the declaration shall indicate the countries of origin contained therein or that may be contained therein.'' Several commenters supported labeling that indicates several countries may be represented in the finished product. As an example, the commenters suggested an all-inclusive label stating ''product of the United States, Canada, or Mexico.'' The commenters contend that such a label will provide consumers with a reasonable indication of likely origin while reducing implementation costs.

One commenter requested that USDA clarify what constitutes the ''same covered commodity''. The commenter stated that the example in the proposed rule referred to green and red leaf lettuce as if they are a single commodity and that the produce industry would consider those two different items. The commenter noted this would render a bag containing red and green leaf lettuce as a processed food item. The commenter recommended that if a commodity has a unique identifier such as a unique price look up code (PLU) related to anything but size or region, it should be considered a unique item.

Other commenters appeared to be confused as to labeling ''blended'' covered commodities and instead provided comments on labeling commodities of mixed origin. The relevant comments have been addressed in the appropriate sections.

Agency Response: In an effort to clarify the labeling requirements for this type of product, the Agency has removed references to the term ''blended'' covered commodities and has added a definition of ''commingled'' covered commodities. Under this interim final rule, commingled covered commodities are defined as a single type of covered commodity (e.g., frozen peas), presented for retail sale in a consumer package, that has been prepared from raw material sources having different origins. If the retail product contains two different types of covered commodities (e.g., peas and carrots), it is considered a processed food item and is not subject to mandatory COOL. Further, a commingled covered commodity does not include ground meat products. However, because labeling of ground meat products was included in the blended (commingled) provisions of the proposed rule, for purposes of discussing the comments, they are included under this subheading.

USDA is concerned about the burden imposed by the rule on facilities that produce a commingled retail product as the added costs of implementing this rule will likely be passed on to consumers. The proposed rule would have required such facilities to document that the origin of a product was separately tracked, while in their control, during production and packaging. The proposed rule also would have required that the labeling of all blended products specify precisely the countries of origin represented within each individually-packaged retail product.

The Department believes that the statutory language makes clear that the purpose of the COOL law is to provide for a retail labeling program for covered commodities—not to impose economic inefficiencies and disrupt the orderly production, processing, and retailing of covered commodities. Therefore, in this interim final rule, the provision to separately track the product has been removed, and the labeling requirements have been made consistent with other Federal labeling requirements (i.e., CBP marking regulations). This interim final rule does not impose any additional burden with respect to the labeling of commingled products for which labeling is also required under CBP regulations.

In the case of perishable agricultural commodities, peanuts, pecans, ginseng, and macadamia nuts, for imported covered commodities that have not subsequently been substantially transformed in the United States that are commingled with imported and/or United States origin commodities, the declaration shall indicate the countries of origin for all covered commodities in accordance with CBP marking regulations (19 CFR part 134).

The 2008 Farm Bill states that the origin declaration for ground beef, ground pork, ground lamb, ground goat, and ground chicken covered commodities shall list the countries of origin contained therein or shall list the reasonably possible countries of origin. This interim final provides that when a raw material from a specific origin is not in a processor's inventory for more than 60 days, the country shall no longer be included as a possible country of origin.

In reference to the comment about clarifying the language ''the same covered commodity'', the Agency has added additional language describing the types of products this labeling provision covers in the preamble. In response to the commenter's recommendation regarding red and green leaf lettuce, the Agency disagrees with the commenter's recommendation to use price lookup codes as the standard for whether or not a covered commodity is considered ''the same''. While green leaf and red leaf lettuce are different varieties of lettuce, they are both still leaf lettuce and thus would not meet the definition of a processed food item. This is also the case with different varieties of apples or onions as each variety—red delicious, fuji, or

granny smith in the case of apples and red, yellow, and white in the case of onions—has its own PLU code. Thus, the provision for labeling commingled covered commodities apples to products such as a bag that contains frozen strawberries originating from the United States and Mexico, a bag that contains bananas originating from Ecuador and Costa Rica, and a bag of lettuce that contains romaine and iceberg lettuce originating from the United States and Mexico.

Remotely Purchased Products

Summary of comments: One commenter recommended that suppliers should list the country of origin on the sales vehicle. Another commenter recommended that the country of origin notification should be allowed to be made either on the sales vehicle or at the time the product is delivered to the consumer.

Agency Response: The Agency agrees that companies should be allowed flexibility in providing the notice of country of origin. As such, under this interim final rule, companies can provide the required notification either on the sales vehicle or at the time the product is delivered to the consumer.

Markings

Section 60.300(a)

Summary of Comments: Several commenters stated that flexibility is critically important to help minimize costs in complying with the law. These commenters urged AMS to permit the use of the numerous declaration options as listed in the interim final rule for fish and shellfish. Commenters also supported the use of a check box to declare country of origin information on covered commodities. Several commenters recommended that the country of origin declaration be allowed to be made in the form of a statement such as ''product of the U.S.'' or as simply the country name such as ''USA''. The commenters pointed out that this provision was contained within the proposed rule, but was deleted from the interim final rule for fish and shellfish.

Agency Response: The Agency believes that the law provides flexibility in providing the country of origin notification and this interim final rule has been drafted accordingly. As such, § 65.400(a) allows for the same flexibility in providing the origin information as allowed in the interim final rule for fish and shellfish, including allowing for the use of a check box. In addition, the use of the name of the country only is permitted under this interim final rule, provided it is in accordance with other Federal labeling laws. For example, in certain circumstances CBP regulations require the words ''product of'' or ''made in'' to precede the name of the country.

Section 60.300(b)

Summary of Comments: Several commenters recommended that the conspicuous location requirement should include any place on the package or product. Several commenters supported the current application of this requirement under the interim final rule for fish and shellfish and recommended that USDA further explain the conspicuous standard to ensure a common understanding across all regulated communities as well as among compliance and enforcement personnel.

Agency Response: At the request of the commenters, the Agency has included an additional discussion of this requirement in the preamble of this rule. Declarations must be legible and placed in a conspicuous location as to allow consumers to find the country(ies) of origin easily and read it without strain when making their purchases, and provided that existing Federal labeling requirements must be followed. For example, the country of origin information may be located on the information panel of a package of frozen produce as consumers are familiar with such location for displaying nutritional and other required information.

Likewise, in the case of store overwrap and other similar type products, which is the type of packaging used for fresh meat and poultry products, the information panel of the package is also considered an acceptable location for the origin declaration as this is a location that is currently utilized for providing other Federally-mandated labeling information (i.e., safe handling instructions, nutrition facts, and ingredients statement). However, to the extent practicable, the Agency encourages retailers and suppliers to place this information on the front, also known as the principal display panel, of these types of packages so it will be readily apparent to consumers.

Section 60.300(d)

Summary of Comments: Several commenters expressed support for the provision in both the proposed rule and the interim final rule for fish and shellfish that allows for commingling like items in the same bulk bin even if they are from different origins. Several commenters asserted that it is impossible to label every single item in a bulk bin, that stickering efficacy is not 100%, and that it is likely that some stickers will fall off during transport and display. These commenters contend that the country of origin notification requirement should be met if the majority of perishable agricultural commodities in a bulk bin have labels as consumers will be able to determine the country of origin.

Agency Response: The Agency agrees that flexibility should be provided to retailers to commingle like items from different origins in bulk bins. Thus, under this interim final rule, a bulk container (e.g., display case, shipper, bin, carton, and barrel), used at the retail level to present product to consumers, may contain a covered commodity from more than one country of origin provided all possible origins are listed. The Agency also understands that stickering efficacy is not 100%. The Agency agrees that consumers would likely be able to discern the country of origin if the majority of items were labeled; however, the Agency encourages retailers to use placards and other signage as a way to more clearly indicate information to consumers as to the origin of the covered commodity. Accordingly, the Agency does not believe it is necessary to change the language for this provision. The Agency will address the issue of preponderance of stickering in its compliance and enforcement procedures, as applicable, to ensure uniform guidance is provided to compliance and enforcement personnel.

Section 60.300(e)

Summary of Comments: Several commenters recommended that the Agency allow for the use of abbreviations for country names as long as the abbreviation clearly indicates the origin of a covered commodity. The commenters made reference to the Agency's policy to follow CBP's interpretation of the Tariff Act with regard to abbreviations and stated their belief that the Agency is not bound by CBP's interpretation. Some commenters recommended that the Agency utilize the country abbreviations established by the International Organization for Standardization. One commenter pointed out the USDA accepts abbreviations from intermediary suppliers and others on records.

Agency Response: The Agency believes that the limited application of abbreviations that unmistakably indicate the country of origin is appropriate. The CBP has a long history of administering the Tariff Act and has issued numerous policy rulings with regard to this subject. The Agency concurs with CBP's interpretation that most abbreviations may not be readily

understood by the majority of consumers. The Agency does permit the use of abbreviations in supplier records as long as a key or other similar document explaining what the abbreviations represent is provided. However, the Agency does not believe that providing a key in the store for consumers to have to locate and decipher is appropriate or reasonable. Accordingly, these recommendations are not adopted. However, the Agency has added clarifying language to § 65.400(e).

Section 60.300(f)

Summary of Comments: Numerous commenters recommended that the Agency accept State and regional label designations in lieu of country of origin labeling for commodities produced in the United States. Two commenters recommended that retailers be permitted to substitute more visually appealing and consumer-targeted labels, such as ones with American flags, in lieu of a standard or commodity label.

Agency Response: The 2008 Farm Bill modified the Act to allow for the use of State, region, or locality label designations to meet the country of origin notification requirements of the statute for perishable agricultural commodities, peanuts, pecans, macadamia nuts, and ginseng that are produced in the United States. The Department believes it is appropriate to expand this provision to also allow State, regional, or locality labels for imported products. Therefore, under this interim final rule, for perishable agricultural commodities, peanuts, pecans, macadamia nuts, and ginseng covered commodities, State or regional label designations are acceptable in lieu of country of origin for both domestic and imported products. Accordingly, this recommendation is adopted in part.

With regard to substituting more visually appealing labels, as long as country of origin information is provided in accordance with this regulation, additional labels can be applied to the package that are more eye appealing. In addition, there is no standardized format for labels under this regulation, so suppliers and retailers have flexibility in designing the appearance of the label provided the origin declaration is legible and placed in a conspicuous location.

Recordkeeping

General

Summary of Comments: Numerous commenters supported the acceptance of existing records used in the normal course of business. These commenters stated that the rule does not need to establish new document or recordkeeping burdens to verify country of origin claims and that existing records should be sufficient. Several commenters recommended that the Agency provide a list of example documents that would illustrate acceptable normal business records. Some of these commenters offered the following examples of documents: Animal health papers, import or Customs documents, producer affidavits, and records maintained in compliance with assessments and remittances for Federally legislated promotion and research programs. Several commenters supported the use of producer affidavits.

Agency Response: The Agency agrees that records kept in the normal course of business likely contain sufficient information to verify origin claims. The Act, as amended by the 2008 Farm Bill, states that records maintained in the course of the normal conduct of business, including animal health papers, import or customs documents, or producer affidavits may serve for verification purposes. The Act, as amended, further states that the Secretary may not require a person that prepares, stores, handles, or distributes a covered commodity to maintain a record of the country of origin of the covered commodity other than those maintained in the course of the normal conduct of the business of such person.

Therefore, under this interim final rule, upon request by USDA representatives, suppliers and retailers subject to this subpart shall make available to USDA representatives, records maintained in the normal course of business that verify an origin claim. Such records shall be provided within 5 business days of the request and may be maintained in any location. In the case of beef, lamb, chicken, goat, and pork, a producer affidavit shall be considered acceptable evidence on which the slaughter facility may rely to initiate the origin claim, provided it is made by someone having first-hand knowledge of the origin of the animal(s) and identifies the animal(s) unique to the transaction. In addition, to further reduce the burden associated with labeling meat covered commodities with origin information, under this interim final rule, slaughter facilities that slaughter animals that are part of a National Animal Identification System (NAIS) compliant system or other recognized official identification system (e.g., Canadian official system, Mexico official system) may choose to rely on the presence of an official ear tag and/or the presence of any accompanying animal markings (i.e., ''Can'', ''M''), as applicable, on which to base their origin claims. This provision also applies to such animals officially identified as a group lot.

With regard to providing examples of normal business records that may be useful in verifying origin claims, the Agency has included some examples of records in the regulation and additional examples have been posted on the AMS Web site.

Location of Records

Summary of Comments: Several commenters requested flexibility in the regulation for establishing the manner and location in which regulated firms maintain records. Commenters noted that firms with multiple locations or a corporate headquarters might choose to centralize supplier records. Commenters requested that the rule permit firms to maintain records centrally, provided the information is readily available and that the firm has the capability to transfer it to the specific retail outlet if requested by USDA. The commenters stated that retailers and suppliers could make records available to USDA either electronically by transferring computer files or by facsimiles of paper documents. Some commenters requested that retailers and suppliers be given a reasonable period of time to produce records requested by the Agency.

Agency Response: The regulation provides flexibility by allowing electronic or hard copy formats, by not requiring specific records, and by providing flexibility in where the records can be kept. The Agency agrees that retailers and suppliers could make records available to USDA representatives either electronically by transferring computer files or by providing facsimiles of paper documents. The Agency also agrees that retailers and suppliers should be allowed a reasonable amount of time to provide records to USDA representatives upon request. Under this interim final rule, the requirement to maintain records at the retail facility has been removed. Accordingly, the recommendation to allow retailers to provide records to the USDA representative within some reasonable period of time is adopted.

Recordkeeping Retention

Summary of Comments: The Agency received numerous comments regarding the recordkeeping retention requirements. One commenter was in favor of the retention period contained in the proposed rule. Several commenters recommended the one-year

retention period contained in the interim final rule for fish and shellfish. Several commenters recommended that the COOL rule harmonize the record retention requirements with the FDA regulations on Bioterrorism. Several commenters recommended a retention period as short as possible and pointed out that many of the covered commodities are purchased by consumers within a matter of weeks, and in the case of fresh meat products, within 40 to 60 days of production. Another commenter added that even for the minimal amount of frozen meat covered commodities that are sold at retail, the time from production through retail sale would be less than 6 months. Another commenter recommended a retention period of 180 days. Another commenter recommended that the Agency consider a similar recordkeeping retention period as that required by FSIS with respect to HACCP documents for fresh products.

Agency Response: Based on the comments received, the Agency agrees that it is appropriate to reduce the record retention requirements contained in the proposed rule. Many of these comments are similar to those that the Agency considered in promulgating the interim final rule for fish and shellfish. Thus, the Agency believes that the recordkeeping provisions in the interim final rule for fish and shellfish, which require a 1-year record retention requirement for suppliers and centrally located retail records, as opposed to the 2-year requirement contained in the proposed rule, is appropriate. In addition, as discussed in more detail in the preamble of this regulation and the preceding responses to comments, the requirement to maintain records at the retail store has been removed. Under this interim final rule, these records may now be kept in any location and must be provided to USDA upon request within 5 business days of the request.

With regard to the recordkeeping retention time implemented by FDA under the Bioterrorism Act, the recordkeeping retention requirements under the final rule (69 FR 71561) issued by FDA vary based on the type of product from six months to two years. Thus, the recordkeeping requirements contained in this interim final rule are similar to those in the FDA regulation and in some cases, are less burdensome. For a more complete discussion of the comments the Agency considered in promulgating the interim final rule for fish and shellfish, readers are invited to review that document.

As to the recommendation for allowing for a shorter record retention period for supplier and centrally-located retail records, the Agency believes a 1-year period is necessary to provide the Agency with sufficient time to conduct supplier compliance reviews. These reviews often do not commence until several months after the product in question was displayed for retail sale. Accordingly, this recommendation is not adopted.

With regard to the comment that the Agency should adopt the recordkeeping provisions required by FSIS with respect to HACCP documents, the record retention requirements contained in this interim final rule are shorter than those required by FSIS with relation to HACCP. Accordingly, this recommendation is not adopted.

Responsibilities of Suppliers and Retailers

Summary of Comments: Several commenters pointed out that in the case of beef, lamb, and pork, most of the records necessary to verify the origin of the livestock used to produce the covered commodity will not be generated by the supplier of the covered commodity. The commenters contend that it is therefore important that the regulation allow the supplier to either have the records or have access to the records as the records to verify the birth country of the livestock will reside with the livestock producer that sold the livestock months or years earlier, and the animal may have changed hands several times before harvest. Several commenters expressed concern with placing undue recordkeeping and liability burdens on livestock producers. Other commenters noted that only livestock producers have first-hand knowledge of the origin of their animals. One commenter recommended that USDA distinguish between suppliers with first-hand knowledge and intermediary suppliers. The commenter suggested that intermediary suppliers should not be required to keep records beyond those necessary to identify their immediate suppliers and subsequent corporate recipients. Another commenter recommended that importers be required to maintain adequate records to reconcile purchase, inventories, and sales of imported and domestic commodities.

One commenter suggested that the ''liability shield'' that entitles retailers and others handling covered commodities to rely on the information provided to them should be amended to reflect the statutory standard for liability that applies to retailers under the statute. The commenter contends that because the statute states that retailers are not subject to fines unless the Secretary determines they have willfully violated the statute, the standard of willfulness is a higher bar to liability than the standard of negligence that is encompassed in the reasonable reliance standard utilized in the ''liability shield.''

Agency Response: The Agency agrees that the provision allowing a supplier of a covered commodity that is responsible for initiating a country(ies) of origin claim to possess or have legal access to records that are necessary to substantiate that claim is necessary. Accordingly, this provision is included in section 65.500(b)(1) of this interim final rule.

With regard to the recommendation that intermediary suppliers be required to keep only those records that identify their immediate suppliers and subsequent recipients, this is the case with products that are pre-labeled with origin information. However, for products that are not pre-labeled, the intermediary supplier must provide the origin information (and identify the product unique to the transaction) in a document that accompanies the product through retail sale. Therefore, the Agency believes it is necessary for intermediary suppliers to also possess records that identify the origin information for compliance verification purposes for products that are not pre-labeled.

With respect to the recommendation to require importers to maintain adequate records to reconcile purchases, inventories, and sales of imported and domestic commodities, the law does not provide the Agency with the authority to require such detailed information nor is such information necessary to substantiate origin claims.

With respect to the safe harbor provision, the 2008 Farm Bill modified the enforcement provisions of the Act such that retailers and suppliers can only be fined if after 30-days of receiving a notice from the Secretary that they are in violation of the Act, the retailer or supplier has not made a good faith effort to comply and continues to willfully violate the Act. Thus, the Agency agrees with the commenter's suggestion that the ''liability shield'' provides less protection for retailers and suppliers than the statute itself. Accordingly, the ''liability shield'' language has been deleted from this interim final rule.

Enforcement

Summary of Comments: The Agency received numerous comments on the issue of enforcement. Numerous commenters recommended that the Agency incorporate a transition period prior to the rule taking effect to allow

industries producing, processing, and retailing covered commodities time to clear the channels of commerce before enforcing the rule. Two commenters recommended that AMS implement COOL for all covered commodities no later than January 1, 2009. Several commenters did not offer a specific implementation timeframe other than to request that the Agency establish a ''reasonable'' period to carry out education and outreach activities. Several commenters referenced the language contained in the House version of the 2008 Farm Bill that states that all animals present in the United States on or before January 1, 2008, shall be considered of United States origin. Other commenters recommended that AMS should presume any meat product or animals in the channels of commerce prior to the rule's implementation date to be of United States origin.

Several commenters urged AMS to establish commodity specific timeframes for the rule's implementation due to unique commercial life-cycle attributes. One commenter suggested an 18-month implementation timeframe for peanuts. One commenter suggested a six to twelve month implementation period and another commenter suggested a one-year timeframe. One commenter suggested timeframes based on the average age of animals at time of harvest. Specifically, the commenter suggested: For imported beef, pork, lamb, ground beef, ground pork and ground lamb, a delayed effective date by at least six months; for beef, pork, lamb, ground beef, ground pork, and ground lamb produced from animals imported for direct harvest, a delayed effective date by at least six months; for beef produced from animals harvested from the United States herd, a delayed effective date by at least 30 months; for ground beef, which is traditionally produced from cull dairy and breeding stock, a delayed effective date of at least 8 years; for pork produced from animals harvested from the United States herd, a delayed effective date by six months; for ground pork, which is traditionally produced from cull breeding stock, a delayed effective date by at least 2 years; and for lamb and ground lamb produced from animals harvested from the United States herd, a delayed effective date by at least 12 months. The commenter further suggested that during the time allowed to clear the channels of commerce, the Agency could encourage retailers to voluntarily label products when the necessary information is available.

Another commenter encouraged the Agency to utilize a similar approach for implementation as that used in the interim final rule for fish and shellfish. The commenter pointed out that frozen perishable agricultural commodities have a long shelf life and that many such products will have been harvested and frozen well before the rule is issued. The commenter recommended that the Agency allow these products to enter the chain of commerce and only require country of origin information on frozen produce that was harvested and processed after the final rule takes effect. The commenter pointed out that the timing for covered meat commodities is also complicated because of the lifecycle of animals. The commenter recommended that the Agency employ a uniform compliance date policy that is used by both FDA and FSIS for frozen perishable agricultural commodities and meat products, if not for all covered commodities.

One commenter requested that the Agency recognize that a willful violation does not occur where a party is exercising good faith efforts to comply with the statute. The commenter further stated their belief that good faith efforts would include a clear program for providing comprehensive labeling of all covered commodities at the store level, recognizing that for various reasons, some small percentage (perhaps 10 or 15%) of covered commodities might not bear labeling on any given day.

Agency Response: The effective date of this regulation is September 30, 2008, because the statute provides for a September 30, 2008, implementation date. However, because some of the affected industries (goat, chicken, pecans, ginseng, and macadamia nuts) did not have prior opportunities to comment on this rulemaking, and the 2008 Farm Bill made changes to several of the labeling provisions for meat covered commodities, it is reasonable to allow time for covered commodities that are already in the chain of commerce and for which no origin information is known or been provided to clear the system. Therefore, the requirements of this rule do not apply to covered commodities produced or packaged before September 30, 2008. In addition, during the six month period following the effective date of the regulation, AMS will conduct an industry education and outreach program concerning the provisions and requirements of this rule. AMS has determined that this allocation of enforcement resources will ensure that the rule is effectively and rationally implemented. This AMS plan of outreach and education should significantly aid the industry in achieving compliance with the requirements of this rule.

Existing State Programs

Summary of Comments: The Agency invited comment on the proposed rule as it relates to existing State programs. One commenter recommended that USDA clarify the preemption language contained in both the proposed rule and the interim final rule for fish and shellfish. Specifically, the commenter stated that USDA should recognize that the Federal law ''occupies the field'' and hence, preempts State country of origin labeling laws for all products that are in the ambit of covered commodities. The commenter stated that States should not be able to impose country of origin labeling requirements on covered commodities that are ingredients in processed food items or on those prepared in food service establishments. The commenter believes that Congress has clearly spoken and concluded that labeling shall not apply to these items.

Agency Response: In accordance with Executive Order 13132, the Agency does not believe there is basis to allow for preemption of State laws that would encompass commodities that are not regulated under this regulation either because they meet the definition of a processed food item or because they were prepared in food service establishments. No comments from States were received. Accordingly, this recommendation is not adopted.

Miscellaneous

Summary of Comments: Many commenters discussed the use of import markings to differentiate cattle of foreign origin from cattle born and raised in the United States. These commenters noted that current APHIS regulations require live cattle imported from Canada to be branded with the letters ''CAN'' and live cattle imported from Mexico to be branded with the letter ''M.'' Commenters argued that processors could rely on these brands and other import markings to segregate animals and ensure accurate country of origin notification. Many of these commenters argued that the absence of import markings should indicate a ''presumption of United States origin.'' AMS also received numerous comments expressing concern about the potential for COOL to create obstacles to international trade and possible conflicts with regard to United States trade agreements under the World Trade Organization, the North American Free Trade Agreement, and General Agreements on Tariffs and Trade. Several other commenters expressed their opinions regarding the justification

for COOL as a food safety or animal health measure. Several other commenters asserted that COOL will not ensure food safety or animal health.

Agency Response: With respect to using import markings to segregate animals, the Agency believes the labeling provisions contained in § 65.300 of this interim final rule provide flexibility such that the need to segregate animals will be limited to those suppliers that want to provide more specific origin information. However, in an effort to further reduce the burden associated with labeling meat covered commodities with origin information, under this interim final rule, slaughter facilities that slaughter animals that are part of a National Animal Identification System (NAIS) compliant system or other recognized official identification system (e.g., Canadian official system, Mexico official system) may also rely on the presence of an official ear tag and/or the presence of any accompanying animal markings (i.e., ''Can'', ''M''), as applicable, on which to base their origin claims. This provision also includes such animals officially identified as a group lot.

With regard to presumption of United States origin, the 2008 Farm Bill amended the Act such that animals present in the United States on or before July 15, 2008, and once present in the United States, remained continuously in the United States will be considered of United States origin.

With respect to the commenters' concern regarding international trade obligations, the Agency has considered these obligations throughout the rulemaking process and concludes that this regulation is consistent with U.S. international trade obligations.

With regard to the comments on COOL serving as a food safety or animal health measure, as stated in the preamble, the purpose of COOL is to provide additional information to consumers on which to base their purchasing decisions. COOL is a retail labeling program and as such does not provide a basis for addressing food safety. Food products, both imported and domestic, must meet the food safety standards of FDA and FSIS.

Preliminary Paperwork Reduction Act

Summary of Comments: USDA received conflicting comments regarding liability burdens and the maintenance of records throughout supply channels between retailers, suppliers and producers. Generally, cattle, pork and lamb producers and their trade associations provided comments supporting protections for livestock producers from undue recordkeeping and liability burdens placed on them by retailers and packers. On the other hand, meat packers and retailers expressed that the rule should grant them the ability to pass liability for noncompliance with labeling or verification of country of origin back down the supply chain to product sources. Two commenters noted that the interim final rule for fish and shellfish deletes the requirement for chain of custody documentation. One commenter concluded that the rule should not require intermediary suppliers to maintain records beyond those necessary to identify their immediate suppliers and subsequent business customers.

Four commenters advocated that USDA should require importers of designated commodities to maintain adequate records to reconcile purchases, inventories and sales of imported and domestic commodities in order to reduce the need for expensive and burdensome affidavits or audits on United States livestock producers. One commenter noted that the beef industry is more segmented than any other industry affected by COOL and that this segmentation complicates the transfer of origin information for United States beef producers.

Another commenter warned that the requirement to document the country of birth, raising and slaughter of livestock will create a tremendous recordkeeping burden on both packers and producers; and in some cases, it may not even be possible to achieve. This commenter contended that those packers harvesting older animals might find it nearly impossible to find adequate supplies of livestock for which records exist regarding the location of the animal's birth. The commenter added that the recordkeeping burden placed on domestic processors might create a disadvantage relative to imported products, which will have no such requirements to document the animal's origin back to birth.

Two commenters further illuminated this point. One of these noted that it would be more efficient in the lamb industry to focus on tracking the one to three percent of United States slaughter representing Canadian lambs imported by a handful of individuals or firms. The commenter also pointed out that due to recordkeeping requirements for assessments and remittances for the Lamb Promotion Research and Information (check-off) order, a current audit trail exists for country of origin of domestic sheep. The other commenter contended that imported meat, by its nature, is likely to have passed through more handling stages than domestic product by the time it reaches the point of final United States retail sale. The commenter stated that because imported beef, lamb and pork passes through at least two countries, and through handling by ranchers, exporters, importers, processors, and distributors, imported products will require a longer audit trail that demands more, and potentially more detailed, recordkeeping.

Agency Response: The Agency has already addressed many of these comments earlier in this Comment and Response section. In general, the Agency has reduced the recordkeeping burden to the extent possible while still maintaining a verifiable audit trail.

Compared to the proposed rule, this interim final rule reduces the length of time that records must be kept, revises the recordkeeping requirements for pre-labeled products, and removes the requirement to maintain records at the retail store. Any person engaged in the business of supplying a covered commodity to a retailer, whether directly or indirectly, must maintain records to establish and identify the immediate previous source and immediate subsequent recipient of a covered commodity for a period of 1 year from the date of the transaction. Under the proposed rule, records would have been required to be kept for 2 years.

For retailers, records and other documentary evidence relied upon at the point of sale by the retailer to establish a covered commodity's country(ies) of origin must be maintained for one year from the date the origin declaration is made at retail and, upon request, provided to any duly authorized representatives of USDA within 5 business days of the request. Under the proposed rule, retailers were required to maintain these records at the retail store for 7 days following the sale of the product.

For pre-labeled products, the interim final rule provides that the label itself is sufficient evidence on which the retailer may rely to establish a product's origin. The proposed rule did not provide for this method of substantiation. Under the interim final rule, records that identify the covered commodity, the supplier, and for products that are not pre-labeled, the country of origin information must be maintained for a period of 1 year from the date the origin designations are made at retail. Under the proposed rule, these records would have been required to be maintained for 2 years.

In addition to these burden reducing changes made by the Agency, the 2008

Farm Bill also made several burden reducing changes. Accordingly, some of the concerns expressed by the commenters have been addressed by the 2008 Farm Bill and by this interim final rule. For example, the statute expressly allows for the use of producer affidavits, so packers will be able to rely on affidavits to base the origin claims for covered commodities. This will alleviate many of the concerns expressed by producers. Likewise, under the 2008 Farm Bill, the Secretary is prohibiting from requiring the creation of records not already maintained in the normal course of business, which will also reduce the recordkeeping burden. In addition, the 2008 Farm Bill contains a provision such that all animals present in the United States on or before July 15, 2008, will be considered of United States origin, which addresses the concerns of commenters regarding adequate supplies of livestock for which origin is documented back to birth. A complete discussion of the changes made as a result of the 2008 Farm Bill can be found earlier in this document.

Preliminary Regulator Impact Analysis

Summary of Comments: Numerous comments were submitted stating that USDA underestimated the implementation and maintenance costs of the COOL program. One commenter stated that the implementation costs plus two years of maintenance costs totaled $49 million. Another commenter provided an estimated total implementation cost of $236,000 for planning, software, training, and capital. It provided an estimated annual maintenance cost of $279,300 for maintenance of hardware/software, operation costs, and packaging. Their reported net economic impact was −$516,200. A third commenter stated that retailers experienced actual first year implementation costs of $9,000 to $16,500 per store for seafood labeling, and intermediary suppliers experienced costs between $200,000 and $250,000 per firm. They reported that one retailer saw a $0.07 per pound (less than 2 percent) increase in cost of goods from its suppliers directly attributable to the requirements necessary to comply with country of origin labeling. A fourth commenter discussed the capital expenditures necessary to meet the product segregation requirements for beef and pork slaughter plants. This commenter estimated that cost to exceed $2 billion. The commenter stated their belief that even with those plants that can be identified as ''All-American'' and exempt from the segregation requirement, the cost still could exceed $1 billion.

Agency Response: While the Agency believes its analysis conducted in the PRIA in 2003 was accurate for that time, the Agency has conducted a new economic impact analysis because economic conditions have changed, updated data are available, and additional commodities have been added. The commodities to be regulated by this regulation are muscle cuts of beef, lamb, goat, pork, and chicken; ground beef, ground lamb, ground chicken, ground goat, and ground pork; perishable agricultural commodities; ginseng; peanuts; macadamia nuts; and pecans.

The results of this updated analysis show estimated first-year incremental cost for growers, producers, processors, wholesalers, and retailers at $2.5 billion. The estimated cost to the United States economy in higher food prices and reduced food production in the tenth year after implementation of the rule is $211.9 million. The Agency also re-estimated the paperwork costs and estimated those to be $126 million in initial and startup costs during the first year and $499 million per year to store and maintain the records thereafter.

With regard to the commenters' statements regarding segregation, this interim final rule provides flexibility in how products of multiple origin can be labeled. Thus, the costs associated with labeling products of multiple origin will likely be less than the upper range estimate in the PRIA as the proposed rule did not contain this flexibility. A complete discussion on labeling products of multiple origin is contained in the Highlights of this Interim Final Rule section earlier in this document.

Summary of Comments: One commenter stated their belief that statute is intended to disadvantage imported meat.

Agency Response: Both importers and domestic suppliers are required to meet the requirements of the rule. The Agency believes that firms will find efficient ways to comply with the requirements of the rule.

Summary of Comments: One commenter stated that the authorizing legislation was not a ''Pro-Consumer'' safety measure.

Agency Response: As discussed in more detail in the preamble and in other responses to comments earlier in this section, COOL is not a food safety measure. COOL provides more information to consumers on which to base their purchasing decisions.

Summary of Comments: Several commenters believe that COOL will have an adverse impact on beef demand. Another commenter believes COOL will hurt consumers because it will discourage the use of imported beef, which will result in less ground beef being produced and driving up the price. Other commenters stated their belief that consumers think domestic products are superior and are willing to pay more for it. One commenter included a paper written by an economics professor entitled, ''An Overview of the Impact of COOL on Production Costs for the U.S. Cattle Producer and Results of the TFOG Experiment'' who concluded, in part, that the impact of COOL on the demand for beef in the United States is uncertain. The paper referenced different opinions expressed by economists and others and stated that there is really no consensus about the impact of COOL on the demand for beef in the United States.

Agency Response: The Agency interprets all of these comments as discussing COOL's impact on the demand for covered commodities. The Agency maintains its position concerning the impact of COOL on the demand for all the covered products as presented in the Regulatory Impact Analysis.

Summary of Comments: One commenter stated that COOL implementation and maintenance costs can be minimized by streamlining regulatory requirements.

Agency Response: As previously discussed, the Agency has made changes that streamline both the regulatory and paperwork burden aspects of COOL. For example, the definition of a processed food item has been changed such that a greater number of products are now exempt from COOL requirements. The fewer the number of products that must be labeled, the lower implementation and maintenance costs will be for many affected entities. Another example is that the overall recordkeeping retention period for retailers and suppliers is reduced from 2 years to 1 year for centrally located records and the requirement to maintain records at the retail store has been removed. These records can now be maintained in any location.

In addition to the changes made by the Agency in an effort to reduce the burden of complying with this rule, changes have also been made as a result of the 2008 Farm Bill. For example, the 2008 Farm Bill and this interim final rule provide for flexibility in labeling products of multiple origin. In addition, the 2008 Farm Bill allows for the use of producer affidavits and prohibits the Secretary from requiring the creation of

records that are not already maintained as part of the normal course of business. A complete discussion of the changes made by the Agency, including the changes made as a result of the 2008 Farm Bill, can be found earlier in this document. The Agency believes these changes as a whole have greatly reduced the burden on affected industries and the cost estimates for the implementation of this rule have been lowered significantly as discussed in the RIA.

Summary of Comments: Several commenters pointed out that many products are already labeled as to country of origin pursuant to existing laws. One commenter illustrated that retailers provide origin labeling on more than 60 percent of the top 20 fruits and top 20 vegetables (by consumption). This commenter added that the industry is now providing such labeling and will continue to do so. These same commenters also contended that additional country of origin labeling requirements are unnecessary and would impose enormous additional costs on all segments of the food chain. They argued that the cost of mandatory country of origin labeling is significant and will not provide consumer benefit.

Agency Response: If 60 percent of the top 20 fruits and the top 20 vegetables are already labeled with origin information as stated by the commenter, the Agency would expect that the cost of implementing COOL for the remaining fruit and vegetable products may be less than what the Agency is estimating. However, it is difficult to quantify the associated cost savings. As for the cost of implementing and maintaining COOL, these commenters did not offer any quantitative data to support their claim.

Summary of Comments: One commenter reported that they implemented COOL without burden or noticeable expense. This commenter is a retailer who believed its customers are demanding to know the origin of the foods they see for sale. They have completed labeling the country of origin on all of its beef, pork, lamb, peanuts and fresh produce (in addition to seafood) without any burden or noticeable expense. They believe this improved traceability reduced their risk.

Agency Response: The Agency views this comment as supporting the Agency's contention that firms will adapt their existing infrastructure as needed to comply with COOL and that firms will find the most cost effective way of doing so.

Summary of Comments: In support of the benefits of the mandatory COOL program, one commenter noted that USDA Economic Research Service (ERS) data revealed that United States origin lamb enjoyed a $.40 per pound price advantage compared to imported lamb products. The commenter further stated that using ERS retail data released in January 2003, the two-year combined volume-weighted average price of domestic lamb was $4.30 per pound. For imported lamb, it was $3.90 per pound.

Agency Response: The Agency has determined that the relationship between domestic and imported lamb prices change over time. In some years domestic prices will be higher and in other years imported prices will be higher. The commenter was examining 2001 and 2002 data. An examination of monthly retail scanner prices provided by ERS from January 2004 through December 2005 indicates that imported lamb prices per pound sold as a premium as compared to domestic lamb for this time period. Thus, it cannot be assumed that origin information consistently provides a net benefit in the form of higher prices for domestic lamb.

Summary of Comments: One commenter cited three studies (surveys) that found consumers overwhelmingly desire COOL and believe they have a right to know such information. One study, conducted in early June 2007, found that 92 percent thought that imported food should be labeled as to its country of origin. Another study (survey), conducted in March 2007, found that 82 percent of the people polled supported mandatory COOL. Finally, a study (survey) conducted in mid-July 1997 found that 88 percent of those polled said all retail food should have COOL. This study also showed that 94 percent believe that consumers have a right to know the country of origin of the foods they purchase.

Agency Response: The Agency does not believe that these types of studies provide a sufficient basis to estimate the quantitative benefits, if any, of COOL. As discussed in the Regulatory Impact Analysis, there are several limitations with the willingness-to-pay studies that call into question the appropriateness of using this approach to make determinations about the benefits of this rule. First, consumers in such studies often overstate their willingness to pay for a product. Second, in most of these willingness-to-pay studies, consumers are not faced with the actual choices they would face at retail outlets. Third, consumers' willingness-to-pay as elicited from a survey is a function of the questions asked. Different questionnaires will yield different results. Finally, the results reported from these studies do not take into account changes in consumers' preferences for a particular product or product attribute over time.

Summary of Comments: One commenter noted that COOL could serve as a risk management measure. Some countries, which may not have as stringent food safety regulations and/or have not implemented/enforced those regulations as rigorously as the U.S., may export hazardous food products. COOL could allow consumers to avoid such food items as the need arose.

Agency Response: As previously discussed in the preamble of this rule and in other responses to comments, COOL provides consumers with more information on which to base their purchases. Food products, both imported and domestic, must meet the food safety standards of FDA and FSIS. COOL will permit consumers to choose the origin of the foods they purchase.

Summary of Comments: Two commenters asserted their belief that the utility of COOL is unsubstantiated and that it imposes onerous costs on covered commodities with no quantifiable benefits. The commenters believe that mandatory COOL should thus be repealed and replaced with a voluntary program.

Agency Response: While it may be difficult to quantify the benefits associated with mandatory COOL, the COOL program must be implemented on September 30, 2008, in accordance with the statute.

Preliminary Regulatory Flexibility Analysis

Summary of Comments: Several commenters urged the Agency to ensure that small businesses were not burdened with unnecessary recordkeeping requirements. One commenter noted that paperwork and recordkeeping burdens continue to be top concerns for small businesses.

Agency Response: In the initial regulatory flexibility analysis, the Agency noted that costs of implementation may be proportionately higher for smaller versus larger firms given the potential scale of economies associated with the operation of systems to comply with the requirements of mandatory country of origin labeling. In particular, larger firms would have the ability to spread fixed costs of implementation over a greater number of units of production, thereby incurring lower average costs per unit.

However, the Agency has drafted this rule to provide as much regulatory relief for small entities as possible within the limits of the discretionary authority provided by the law. For example, the

Agency has reduced the recordkeeping retention period and has provided flexibility in labeling commingled covered commodities and commodities of multiple origin. In addition, the rule allows market participants to decide how best to implement COOL in their operations. And, market participants other than those retailers defined by the statute can decide to sell products through marketing channels not subject to the rule. The Agency further assumes that in the longer run, higher costs will be passed on to consumers in the form of higher prices for the covered commodities.

Summary of Comments: Several commenters said that recordkeeping and other costs of compliance will fall disproportionately on smaller, independent farmers. One of these commenters noted that the position of small, independent farmers may be weakened due to this additional burden.

Agency Response: As noted in the Agency's previous response, the initial regulatory flexibility analysis showed that costs of implementation may be proportionately higher for smaller versus larger firms. However, the Agency believes smaller farmers may have some implementation cost advantages over larger farms. Smaller farms likely have simpler recordkeeping systems, and thus would incur lower development costs relative to larger farms. The rule does not prescribe a particular recordkeeping system; so for example, a small fruit and vegetables operation likely would be able to maintain records in hardcopy form rather than developing a complicated electronic recordkeeping system.

Summary of Comments: Several commenters asserted their belief that COOL would provide benefits to small producers and consumers at reasonable implementation costs. One commenter explained that for truly small producers (less than 50 animals), mandatory COOL will create a niche market.

Agency Response: The Agency believes that the firms within each of the industries will competitively adjust to the provisions of COOL. Some may create niche markets while others may provide covered commodities to retailers, the food service industry, and the away from home food markets which are not covered by COOL.

Executive Order 12866—Regulatory Impact Analysis

USDA has examined the economic impact of this interim final rule as required by Executive Order 12866. USDA has determined that this regulatory action is economically significant, as it is likely to result in a rule that would have an effect on the economy of $100 million or more in any one year. This rule has been reviewed by the Office of Management and Budget (OMB). Executive Order 12866 requires that a regulatory impact analysis be performed on all economically significant regulatory actions.

This interim final rule defines covered commodities as muscle cuts of beef, lamb, goat, pork, and chicken; ground beef, ground lamb, ground pork, ground goat, and ground chicken; perishable agricultural commodities; ginseng; peanuts; macadamia nuts; and pecans. This interim final rule together with the interim final rule for fish and shellfish that was published in the October 5, 2004, **Federal Register** (69 FR 89708) define the full scope of covered commodities as defined by law.

This regulatory impact assessment reflects revisions to the Preliminary Regulatory Impact Assessment (PRIA)(68 FR 61944). Revisions to the PRIA were made as a result of changes to the rule relative to the October 30, 2003, proposed rule, and comments received on the proposed rule for all covered commodities.

The Comments and Responses section lists the comments received and provides the Agency's responses to the comments. Where substantially unchanged, results of the PRIA are summarized herein, and revisions are described in detail. Interested readers are referred to the text of the PRIA for a more comprehensive discussion of the assumptions, data, methods, and results.

Summary of the Economic Analysis

The estimated benefits associated with this interim final rule are likely to be small. The estimated first-year incremental costs for growers, producers, processors, wholesalers, and retailers are $2.5 billion. The estimated cost to the United States economy in higher food prices and reduced food production in the tenth year after implementation of the rule is $211.9 million.

Note that this analysis does not quantify certain costs of the rule such as the cost of the rule after the first year, or the cost of any supply disruptions or any other ''lead-time'' issues. Except for the recordkeeping requirements, there is insufficient information to distinguish between first-year startup and maintenance costs versus ongoing maintenance costs for this interim final rule. Maintenance costs beyond the first year are expected to be lower than the combined startup and maintenance costs required in the first year.

USDA finds little evidence that consumers are willing to pay a price premium for country of origin labeling (COOL). USDA also finds little evidence that consumers are likely to increase their purchase of food items bearing the United States origin label as a result of this rulemaking. Current evidence does not suggest that United States producers will receive sufficiently higher prices for United States-labeled products to cover the labeling, recordkeeping, and other related costs. The lack of widespread participation in voluntary programs for labeling products of United States origin provides evidence that consumers do not have strong enough preferences for products of United States origin to support price premiums sufficient to recoup the costs of labeling.

Statement of Need

Justification for this interim final rule remains unchanged from the PRIA. This rule is the direct result of statutory obligations to implement the COOL provisions of the 2002 and 2008 Farm Bills. There are no alternatives to Federal regulatory intervention for implementing this statutory directive.

The COOL provisions of the Act change current Federal labeling requirements for muscle cuts of beef, pork, lamb, goat, and chicken; ground beef, ground pork, ground lamb, ground goat, and ground chicken; perishable agricultural commodities; ginseng; peanuts; macadamia nuts; and pecans (hereafter, covered commodities). Under current Federal laws and regulations, COOL is only universally required for wild and farm-raised fish and shellfish covered commodities. In particular, labeling of United States origin is not currently mandatory for the other commodities and labeling of imported products at the consumer level is required only in certain circumstances.

As described in the PRIA, the conclusion remains that there does not appear to be a compelling market failure argument regarding the provision of country of origin information. Comments received on the PRIA and subsequent requests for comments elicited no evidence of significant barriers to the provision of this information other than private costs to firms in the supply chain and low expected returns. Thus, from the point of view of society, market mechanisms would ensure that the optimal level of country of origin information would be provided.

Alternative Approaches

The PRIA noted that many aspects of the mandatory COOL provisions

contained in the Act are prescriptive and provide little regulatory discretion for this rulemaking. Some commenters suggested that USDA explore more opportunities for less costly regulatory alternatives. Specific suggestions focused on methods for identifying country of origin, recordkeeping requirements, and the scope of products required to be labeled.

A number of comments on the PRIA suggested that USDA adopt a ''presumption of United States origin'' standard for identifying commodities of United States origin. Under this standard, only imported livestock and covered commodities would be required to be identified and tracked according to their respective countries of origin. Any livestock or covered commodity not so identified would then be considered by presumption to be of United States origin. A presumption of origin standard would require mandatory identification of products not of United States origin. The law, however, specifically prohibits USDA from using a mandatory identification system to verify the country of origin of a covered commodity. In addition, as discussed in the proposed rule, the Agency does not believe that a presumption of United States origin standard provides a means of providing country of origin information that is credible and can be verified. Comments on the proposed rule did not identify how to overcome these obstacles. Thus, a presumption of United States origin standard is not a viable alternative.

With regard to alternatives for recordkeeping, a number of commenters suggested that USDA reduce the recordkeeping burden for the rule. In this interim final rule, the requirement to maintain records at the retail store has been removed. In addition, the overall recordkeeping retention period for retailers and suppliers is reduced from 2 years to 1 year.

The interim final rule also ''streamlines'' the required recordkeeping for items that are pre-labeled (i.e., labeled by the manufacturer/first handler) with the required country of origin information. Records that demonstrate the chain of custody (immediate previous source and subsequent recipient) for all covered items must be maintained, but the underlying records (e.g., invoices, bills of lading, production and sales records, etc.) do not need to identify the country of origin of these pre-labeled products. For example, if a processor labels the country of origin on a bag of apples, and the apples ultimately are sold in that package at retail, then that label may serve as sufficient evidence on which the retailer may rely to establish the product's origin. Thus, the retailer's records would not need to show country of origin information for that bag of apples, but the retailer's records would need to include information to allow the source of those apples to be tracked back through the system to allow the country of origin claim to be verified at the point in the system at which the claim was initiated. Under the proposed rule, the retailer would have also been required to identify the country of origin of the bag of apples within its recordkeeping system; the information provided on the bag itself would not have been sufficient. This change in recordkeeping requirements should lessen the number of changes that entities in the distribution chain need to make to their recordkeeping systems and should lessen the amount of data entry that is required.

This interim final rule changes the definition of a processed food item such that a greater number of products are now exempt from COOL requirements. The fewer the number of products that must be labeled, the lower implementation and maintenance costs for many affected entities.

The 2008 Farm Bill contains a number of provisions that amended the COOL provisions in the Act. In general, these changes provide for greater flexibility in labeling by retailers and suppliers and reduces the burden on livestock producers. For example, the 2008 Farm Bill provides for flexibility in labeling ground products by allowing the notice of country of origin to include a list of countries contained therein or that may reasonably be contained therein. In addition, the law provides flexibility in labeling meat covered commodities derived from animals of multiple countries of origin. For example, under this interim final rule, if an animal was born, raised, and/or slaughtered in the United States and was not imported for immediate slaughter as defined in § 65.180, the origin of the resulting meat products derived from that animal may be designated as Product of the United States, Country X, and/or (as applicable) Country Y where Country X and Country Y represent the actual or possible countries of foreign origin.

The law also provides that meat from animals present in the United States on or before July 15, 2008, and once present in the United States, remained continuously in the United States, may be labeled as having a United States origin. Additionally, the law states that producer affidavits shall be considered sufficient records documenting animals' origin.

The law also states that for perishable agricultural commodities, peanuts, pecans, macadamia nuts, and ginseng produced in the United States, designation of the State, region, or locality of the United States where such commodity was produced shall be sufficient to identify the country of origin.

As noted in the PRIA, the law stated that COOL applies to the retail sale of a covered commodity beginning September 30, 2004. Subsequent to the publication of the proposed rule, the law was amended to change the implementation date to September 30, 2008, for all covered commodities except farm-raised and wild fish and shellfish. The implementation date for fish and shellfish covered commodities was September 30, 2004. The delay of the effective date of the labeling requirements under the law provides affected entities with additional time to adjust their systems to comply with the requirements of the law and this rule.

Analysis of Benefits and Costs

As in the PRIA, the baseline for this analysis is the present state of the affected industries absent mandatory COOL. USDA recognizes that some affected firms have already begun to implement changes in their operations to accommodate the law and the expected requirements of this interim final rule.

Because the Act contains an implementation date of September 30, 2004, for wild and farm-raised fish and September 30, 2008, for all other covered commodities, the economic impacts of the rule will be staggered by four years. The analysis herein of economy wide costs of the rule abstracts away from the staggered dates of implementation and treats all commodities as having the same effective date of implementation. As discussed more fully below, a two-pronged approach was used to estimate the costs of this rule. While direct fish costs are not specifically included and discussed in this analysis, they have been updated using more recent data and used to estimate the overall impacts of this rule on the United States economy even though labeling of fish was implemented in 2004 and no new regulations for fish are forthcoming from this rule. This was done to take into account all the cross-commodity effects of this rule. The results of the analysis are not significantly affected by this simplifying assumption.

Benefits: The expected benefits from implementation of this rule are difficult to quantify. The Agency's conclusion remains unchanged, which is that the

benefits will be small and will accrue mainly to those consumers who desire country of origin information. Several analysts conclude that the main benefit is the welfare effect resulting from removing informational distortions associated with not knowing the origin of products (Ref. 1). Numerous comments received on previous COOL rulemaking actions indicate that there clearly is interest by some consumers in the country of origin of food. The mandatory COOL program may provide additional benefits to these consumers. However, commenters provided no additional substantive evidence to alter the Agency's conclusion that the measurable economic benefits of mandatory COOL will be small. Additional information and studies cited by commenters were of the same type identified in the PRIA—namely, consumer surveys and willingness-to-pay studies, including the most recent studies reviewed for this analysis (Ref. 2; Ref. 3). The Agency does not believe that these types of studies provide a sufficient basis to estimate the quantitative benefits, if any, of COOL.

There are several limitations with the willingness-to-pay studies that call into question the appropriateness of using this approach to make determinations about the benefits of this rule. First, consumers in such studies often overstate their willingness to pay for a product. This typically happens because survey participants are not constrained by their normal household budgets when they are deciding which product or product feature they most value. Second, in most of these willingness-to-pay studies, consumers are not faced with the actual choices they would face at retail outlets. Third, consumers' willingness-to-pay as elicited from a survey is a function of the questions asked. Different questionnaires will yield different results. Finally, the results reported from these studies do not take into account changes in consumers' preferences for a particular product or product attribute over time.

As was the case in the interim final rule for fish and shellfish, a number of commenters pointed to additional food safety incidents that occurred in 2007, suggesting that mandatory COOL would provide food safety benefits to consumers. As discussed in the PRIA, however, mandatory COOL does not address food safety issues. Appropriate preventative measures and effective mechanisms to recall products in the event of contamination incidents are the means used to protect the health of the entire consuming public regardless of the form in which a product is consumed or where it is purchased. In addition, foods imported into the United States must meet food safety standards equivalent to those required of products produced domestically.

Costs: To estimate the costs of this rule, a two-pronged approach was employed. First, implementation costs for firms in the industries directly affected by the rule were estimated. The implementation costs on directly affected firms represent increases in capital, labor, and other input costs that firms will incur to comply with the requirements of the rule. These costs are expenses that these particular firms must incur, and thus represent the opportunity costs of the rulemaking.

These costs, however, are not necessarily dead weight losses to the United States economy, as measured by the value of goods and services that are produced. This is simply because increases in capital, labor, and other inputs necessary to comply with the rule will benefit the providers of such inputs. In order to estimate the net decrease in economic activity as a result of this rulemaking, the implementation cost estimates were applied to a general equilibrium model to estimate overall impacts on the United States economy after a 10-year period of economic adjustment. The general equilibrium model provides a means to estimate the change in overall consumer purchasing power after the economy has adjusted to the requirements of the rule. In addition, since the Department has not identified a market failure associated with this rulemaking and therefore does not believe the rule would have measurable benefits, we believe this net decrease in economic activity can be considered the overall net costs (benefits minus costs) of this rulemaking.

Details of the data, sources, and methods underlying the cost estimates are provided in the PRIA. This section provides the revised cost estimates and describes revisions made to the PRIA.

In the PRIA, a range of estimated implementation costs were developed to reflect the likely range of first-year costs for directly affected firms to comply with the proposed rule. The lower range of incremental cost estimates reflected the costs to modify and maintain current recordkeeping systems, while the upper range of estimates reflected other capital and operational costs to comply with the proposed rule. We concluded in the PRIA that costs likely would fall in the middle to upper end of the range of estimated costs. Taking into account comments received on the proposed rule and the PRIA, as was the case in the regulatory impact analysis in the interim final rule for fish and shellfish, this revised regulatory impact assessment presents only a single set of anticipated costs. Comments representing affected entities clearly described that compliance with the rule would require changes beyond recordkeeping alone. The revised incremental cost estimates reflect not only the revised definition of a processed product but the changes made as a result of the 2008 Farm Bill, the additional recordkeeping costs and additional payments by the directly affected firms for capital, labor, and other expenses that will be incurred as a result of operational changes to comply with the rule.

First-year incremental costs for directly affected firms are estimated at $2.5 billion, a reduction of $1.4 billion or 36 percent from the upper range estimate presented in the proposed rule. Costs per firm are estimated at $376 for producers, $53,948 for intermediaries (such as handlers, importers, processors, and wholesalers), and $235,551 for retailers.

To assess the overall net impacts of the higher costs of production resulting from the rule, we used a computational general equilibrium (CGE) model of the United States economy developed by USDA's Economic Research Service (ERS) (Ref 4). The model was adjusted by imposing the estimated implementation costs on the directly impacted segments of the economy. That is, the costs of implementation increase costs of production for directly impacted firms, and these increased costs of production were imposed on the CGE model. The model estimates changes in prices, production, exports, and imports as the directly impacted industries adjust to higher costs of production over the longer run (10 years). The CGE model covers the whole United States economy, and estimates how other segments of the economy adjust to changes emanating from the directly affected segments and the resulting change in overall productivity of the economy.

Overall net costs to the United States economy in terms of reduced purchasing power resulting from a loss in productivity after a decade of adjustment are estimated at $211.9 million in the tenth year. Domestic production for all of the covered commodities at the producer and retail levels, except for fruits and vegetables, is estimated to be lower, and prices are estimated to be higher, compared to the absence of this rulemaking. Fruit and vegetable production, exports, and imports are estimated to increase even though costs increase due to this rulemaking, likely due to substitution

effects attributable to the differential cost impacts of the rule. In addition, United States exports are estimated to decrease for all covered commodities except for fruits and vegetables. Compared to the baseline of no mandatory COOL, United States imports are estimated to increase for fruits and vegetables, cattle and sheep, hogs, chicken, and fish. United States imports of broilers, beef and veal, and pork are estimated to decrease.

The findings indicate that, consistent with standard economic theory, directly affected industries recover a portion of the higher costs imposed by the rule through slightly higher prices for their products. With higher prices, the quantities of their products demanded also decline. Consumers pay slightly more for the products and purchase less of the covered commodities. Overall, the model indicates that the net loss to society, or the ''deadweight'' burden of the rule, is considerably smaller than the incremental opportunity costs to directly affected firms that were imposed on the model. The remainder of this section describes in greater detail how the estimated direct, incremental costs and the overall net costs to the United States economy are developed.

Cost assumptions: This rule directly regulates the activities of retailers (as defined by the law) and their suppliers. Retailers are required by the rule to provide country of origin information for the covered commodities that they sell, and firms that supply covered commodities to these retailers must provide them with this information. In addition, virtually all other firms in the supply chain for the covered commodities are potentially affected by the rule because country of origin information will need to be maintained along the entire supply chain.

Number of firms and number of establishments affected: This rule is estimated to directly or indirectly affect approximately 1,256,000 establishments owned by approximately 1,222,000 firms. Table 1 provides estimates of the affected firms and establishments.

TABLE 1—ESTIMATED NUMBER OF AFFECTED ENTITIES

Type	Firms	Establishments
Beef, Lamb, Pork, and Goat:		
Cattle and Calves	971,400	971,400
Sheep and Lamb	69,090	69,090
Hogs and Pigs	65,540	65,540
Goats	9,146	9,146
Stockyards, Dealers & Market Agencies	6,807	6,807
Livestock Processing & Slaughtering	2,943	3,207
Meat & Meat Product Wholesale	2,509	2,706
Chicken:		
Chicken Producer and Processor	38	168
Chicken Wholesaler/Distributor	510	564
Perishable Agricultural Commodities:		
Fruits & Vegetables	79,800	79,800
Ginseng Farms	190	190
Ginseng Dealers	46	46
Frozen fruit, juice & vegetable mfg	155	247
Fresh fruit & vegetable wholesale	4,654	5,016
Peanuts, Pecans, & Macadamia Nuts:		
Peanut Farming	650	650
Macadamia Farming	53	53
Pecan Farming	1,119	1,119
Roasted nuts & peanut butter mfg	8	9
Peanuts, Pecans, & Macadamia Wholesalers	5	5
General line grocery wholesalers	3,037	3,436
Retailers	4,040	36,392
Totals:		
Producers	1,197,026	1,197,156
Handlers, Processors, & Wholesalers	20,674	22,043
Retailers	4,040	36,392
Grand Total	1,221,740	1,255,591

Information in the PRIA for the numbers of affected producers has been updated with more recent information. Other changes from the PRIA are reductions in the numbers of affected entities in the peanut sector, and consequently, in the totals. In addition, affected entities in the chicken, goat, ginseng, macadamia nut, and pecan industries have been added. The rule covers only ginseng root. As previously discussed, the rule does not cover most product forms of peanuts, macadamia nuts, and pecans sold at retail, such as roasted and dry-roasted peanuts. Only green and raw nuts are required by COOL because other product forms are not covered by this regulation due to the definition of a processed food item. Market shares for green and raw nuts sold at affected retailers are not available, but the volume of sales is certainly very small in comparison to roasted peanuts. For purposes of estimation, the numbers of affected entities at each level of the peanut, macadamia nuts, and pecan sectors were reduced to 5 percent of their totals, consistent with levels reported in the PRIA (as applicable) due to the large percentage of product forms not covered by this rule. The number of peanut producers is reduced from 13,000 to 650, the number of macadamia nut producers is estimated at 53, the number of pecan producers is estimated at 1,119, the number of peanut, macadamia nut and pecan processing (which includes drying) firms is estimated at 8, and the number of peanut, macadamia nut, and pecan wholesaling firms is estimated at 5.

The chicken industry is somewhat different from the other covered commodities. One major difference is that chicken firms are highly vertically integrated and the integrators own the birds from the time they hatch to the time they sell the birds directly to retailers or to another processor or distributor. There are 38 chicken companies in the United States operating 168 slaughtering plants. The integrators dictate all aspects of the production process to the growers who are under contractual obligation to grow-out chickens for one of the integrators. All decisions from when to populate a grower's farm, to feed formulation, veterinarian services, and harvesting the mature chickens are made by the integrator. The grower supplies the chicken houses and the labor.

Of all the chicken sold to retailers, 68.9 percent comes directly from the integrator, 27.7 percent through a distributor, and the remaining from brokers and further processors. With 95 percent of the chickens produced/processed under vertical integration, keeping track of the product should be less burdensome than for other covered commodities. For the vertically integrated firms, the main cost will be stepping-up their on-going tracking system, if they do not have an adequate system already, more labeling, and more involvement in ensuring the required information is sent to retailers for each load of product, if the product is not already pre-labeled for COOL.

It is assumed that all firms and establishments identified in Table 1 will be affected by the rule, although some may not produce or sell products ultimately within the scope of the rule. While this assumption may overstate the number of affected firms and establishments, we nevertheless believe the assumption is reasonable. Detailed data are not available on the number of entities categorized by the marketing channels in which they operate and the specific products that they sell.

Source of cost estimates: To develop estimates of the cost of implementing this rule, comments on the proposed rule as well as the interim final rule for fish and shellfish were reviewed and available economic studies were also examined. No single source of information, however, provided comprehensive coverage of all economic benefits and costs associated with mandatory COOL for all of the covered commodities. Available information and knowledge about the operation of the supply chains for the covered commodities were used to synthesize the findings of the available studies about the rule's potential costs.

Cost drivers: This rule is a retail labeling requirement. Retail stores subject to this rule will be required to inform consumers as to the country of origin of the covered commodities that they sell. To accomplish this task, individual package labels or other point-of-sale materials will be required. If products are not already labeled by suppliers, the retailer will be responsible for labeling the items or providing the country of origin information through other point-of-sale materials. This may require additional retail labor and personnel training. Modification to existing recordkeeping systems likely will be required to ensure that products are labeled accurately and to permit compliance and enforcement reviews. For most retail firms of the size defined by the statute (i.e., those retailing fresh and frozen fruits and vegetables with an invoice value of at least $230,000 annually), we assume that recordkeeping will be accomplished primarily by electronic means. Modifications to recordkeeping systems will require software programming and may entail additional computer hardware. Retail stores are also expected to undertake efforts to ensure that their operations are in compliance with the rule.

Prior to reaching retailers, most covered commodities move through distribution centers or warehouses. Direct store deliveries (such as when a local truck farmer delivers fresh produce directly to a retail store) are an exception. Distribution centers will be required to provide retailers with country of origin information. This likely will require modification of existing recordkeeping processes to ensure that the information passed from suppliers to retail stores permits accurate product labeling and permits compliance and enforcement reviews. Additional labor and training may be required to accommodate new processes and procedures needed to maintain the flow of country of origin information through the distribution system. There may be a need to further separate products within the warehouse, add storage slots, and alter product stocking, sorting, and picking procedures.

Packers and processors of covered commodities will also need to inform retailers and wholesalers as to the country of origin of the products that they sell. To do so, their suppliers will need to provide documentation regarding the country of origin of the products that they sell. Maintaining country of origin identity through the packing or processing phase may be more complex if products are from more than one country. The efficiency of operations may be affected as products move through the receiving, storage, processing, and shipping operations. For packers and processors handling products from multiple origins, there may also be a need to separate shifts for processing products from different origins, to split processing within shifts, or to alter labels to correctly identify the country or countries of origin. However, in the case of meat covered commodities, there is flexibility in labeling covered commodities of multiple origins under this interim final rule. In the case where products of different origins are segregated, costs are likely to increase. Records will need to be maintained to ensure that accurate country of origin information is retained throughout the process and available to permit compliance and enforcement reviews. In the case of beef, lamb, chicken, goat, and pork, a producer affidavit shall be considered acceptable evidence on which the slaughter facility may rely to initiate the country of origin claim.

Processors handling only domestic origin products or products from a single country of origin may have lower implementation costs compared with processors handling products from multiple origins. Procurement costs also may be unaffected in this case, if the processor is able to continue sourcing products from the same suppliers. Alternatively, a processor that currently sources products from multiple countries may choose to limit its source to fewer countries or a single country. In this case, such cost avoidance would be partially offset by additional procurement costs to source supplies from a single or narrower country of origin. Additional procurement costs may include higher transportation costs due to longer shipping distances and higher acquisition costs due to supply and demand conditions for products from a particular country of origin, whether domestic or foreign.

At the production level, agricultural producers need to maintain information in existing records to establish country of origin information for the products they produce and sell. Country of origin information will need to be transferred to the first handler of their products, and records sufficient to allow the source of the product to be traced back will need to be maintained as the products move through the supply chains. In the case of beef, lamb, chicken, goat, and pork, a producer affidavit shall be considered acceptable evidence on which the slaughter facility may rely to initiate the country of origin

claim. In general, additional producer costs include the cost of modifying and maintaining a recordkeeping system for country of origin information, animal or product identification, and labor and training.

Incremental cost impacts on affected entities: To estimate the direct costs of this rule, the focus is on those units of production that are affected (Table 2). Relative to the PRIA, estimated quantities are reduced for peanut producers and for all commodities at the intermediary and retailer levels.

TABLE 2—ESTIMATED ANNUAL UNITS OF PRODUCTION AFFECTED BY MANDATORY COUNTRY OF ORIGIN LABELING

	Beef	Pork	Lamb and goat	Chicken	Fruit, vegetable, and ginseng	Peanuts, pecans, and macadamia nuts
	Million Head			Million Pounds		
Producer	33.9	104.8	2.9	45,012.9	120,388.5	212.7
	Million Pounds					
Intermediary	24,890	6,721	354	27,710	99,449	11
Retailer	8,193	2,330	133	17,645	47,078	5

For livestock, the relevant unit of production is an animal because there will be costs associated with maintaining country of origin information on each animal. These costs may include recordkeeping and ear tagging and other related means of identification on either an individual animal or lot basis. Annual domestic slaughter numbers are used to estimate the flow of animals through the live animal production segment of the supply chain. Estimates have changed from the PRIA due to the addition of the new commodities (chicken, goats, macadamia nuts, pecans, and ginseng), the use of more up-to-date information for previously included commodities, the revised definition of a processed product and of ground beef, and changes made to the COOL provisions by the 2008 Farm Bill.

For chicken producers, production is measured by round weight (live weight) pounds.

For fruits and vegetables, we assume that essentially all production is predestined for either fresh or processing use. That is, growers know before the crop is produced whether it will be sold for fresh consumption or for processing. However, producers do not know whether their products ultimately will be sold to retailers, foodservice firms, or exporters. Therefore, it is assumed that all fresh fruit and vegetable production and production destined for frozen processors at the producer level will be affected by this rule. Ginseng production has been included with the fruit and vegetable production. The total fruit and vegetable production has been updated with 2006 data from the PRIA.

As previously discussed, only green and raw peanuts, macadamia nuts, and pecans sold at retail are subject to the requirements of this rule because of the definition of a processed food item. Green and raw peanuts are specialty items typically sold at roadside stands, through mail order, and at specialty shops. These items frequently are not carried by many of the retailers subject to this rule. Statistics on the size of this niche market are not readily available. We assume that no more than 5 percent of the sales of peanuts at subject retailers are sold as green or raw peanuts. Therefore, the initial estimates of the volume of peanuts affected by this rule are reduced to 5 percent of the amounts estimated in the PRIA. Macadamia nuts and pecans have been included with peanuts.

We assume that all sales by intermediaries such as handlers, packers, processors, wholesalers, and importers will be affected by the rule. Although some product is destined exclusively for foodservice or other channels of distribution not subject to the rule, we believe these intermediaries will seek to keep their marketing options open for possible sales to subject retailers. Estimated units of production for most commodities at the intermediary level are reduced from the PRIA due to the definition of a processed food item.

Beef production at the intermediary level is reduced 10 percent from the PRIA estimate to account for the change in the definition of a processed food item. Data are not readily available on the sales of beef in different product forms. Based on discussions with industry experts, it is assumed that approximately 10 percent of beef products are sold in forms exempt from this rule (e.g., cooked products, seasoned products).

Pork production at the intermediary level is reduced by 12.2 billion pounds. Unlike beef and lamb, much of the pork carcass typically is processed into products that would not be covered under the COOL rule. For example, most of the ham and bacon are cured, and other cuts such as picnic meat are used for sausage and other processed products. Thus, a factor of 0.375 is applied to pork production at both the intermediary and retailer levels, which is the estimate of the proportion of the retail-weight pork carcass that is used for fresh pork cuts that would require country of origin labeling under the rule. The cuts assumed to be covered commodities are fresh ham, all of the loin cuts, spareribs, and the entire Boston butt. We recognize that some of these cuts will be processed into items not covered by the rule, while other cuts will be sold in unprocessed forms that would be covered by the rule. In the PRIA, the 37.5 percent adjustment factor was applied at the retailer level, but not at the intermediary level. In this analysis, we have also applied the adjustment at intermediary levels, because products destined for items exempt from the rule would not require COOL. In addition to the 37.5 percent adjustment factor, a further reduction of 10 percent is applied to account for the increase in the number of items exempt from the labeling requirements due to the revised definition of a processed food item.

Lamb production at the intermediary level is unchanged from the PRIA, as there are relatively few of the value-added types of products that would be excluded from labeling. Goat meat has been included with lamb.

Fruit and vegetable production at the intermediary level is reduced by 21.2

billion pounds to exclude products not covered by this rule under the definition of a processed food item. The revised estimate includes only frozen, plain vegetables in the frozen vegetables category because items such as mixed frozen vegetables and vegetables with sauce are not covered by this rule. Frozen, plain vegetable sales at retail are estimated at 5.5 billion pounds (Ref. 5).

Information and data on ginseng is limited. However, the Wisconsin Department of Agriculture reports the number of growers at 190, the number of dealers at 46, and grower sales at 282,055 dry root pounds for 2006 (Ref. 6). While some other regions in the country likely produce ginseng, information could not be found and it is believed that Wisconsin is the largest producing state. The information from Wisconsin likely underestimates the total number of farms, dealers, and production of ginseng. However, we believe that Wisconsin represents most of the ginseng production; therefore, this information is used for this rule. Since the number of entities and production are likely underestimated and the production is relatively small as compared to other covered commodities, the production was not adjusted for retail consumption.

The Census of Agriculture provides an estimate of the number of macadamia nut farming operations. The total number of macadamia farms is estimated at 1,059 [Ref. 7]. Businesses that husk and crack macadamia nuts are unofficially estimated by the Hawaii Field Office of the National Agricultural Statistical Service (NASS) at 8 firms and establishments. Businesses that wholesale macadamia nuts are estimated by the Hawaii Department of Agriculture at 21 firms and establishments. Similar to peanuts, the rule exempts most product forms of macadamia nuts sold at retail. While data on macadamia nuts sold at retail that are covered by this rule are not available, the volume of sales is certainly very small. For purposes of estimation, the number of affected entities at each level of the macadamia nut sector has been reduced to 5 percent of the total estimated. The number of farms has been reduced from 1059 to 53 and the number of wholesalers has been reduced from 21 to 1.

The Census of Agriculture provides an estimate of 22,371 pecan farming operations [Ref. 7]. Similar to peanuts and macadamia nuts, the rule exempts most product forms of pecans sold at retail. For purposes of estimation, the number of affected entities at each level of the pecan sector has been reduced to 5 percent of the total 22,371 farms to 1,119 farms.

As with peanut, macadamia nut, and pecan production at the producer level, peanut, macadamia nut, and pecan production at the intermediary level is also reduced by 95 percent. The estimate of peanut, macadamia nut, and pecan production is intended to include only green and raw peanuts, macadamia nuts, and pecans.

For retailers, food disappearance figures are adjusted to estimate consumption through retailers as defined by the statute. For each covered commodity, disappearance figures are multiplied by 0.470, which represents the estimated share of production sold through retailers covered by this rule. To derive this share, the factor of 0.622 is used to remove the 37.8 percent food service quantity share of total food in 2006 (Ref. 8). This factor is then multiplied by 0.756, which was the share of sales by supermarkets, warehouse clubs and superstores of food for home consumption in 2006 (Ref 9). In other words, supermarkets, warehouse clubs and superstores represent the retailers as defined by PACA, and these retailers are estimated to account for 75.6 percent of retail sales of the covered commodities.

Estimated beef and pork volumes at the retailer level are reduced by 10 percent from the PRIA to account for the larger number of items exempt from labeling under the revised definition of a processed food item. Lamb volume is unchanged from the PRIA estimate. Goat meat has been included with lamb.

Estimated total retailer volume is increased by 18.0 billion pounds because chicken was not a covered commodity in the PRIA.

Fruit and vegetable retailer volume is reduced by 8.5 billion pounds from the PRIA estimate because of the exclusion of a large volume of frozen vegetable products under the revised definition of a processed food item. Retailer peanut volume is reduced 95 percent from the PRIA estimate due to the revised definition of a processed food item.

Table 3 summarizes the direct, incremental costs that firms will incur during the first year as a result of this rule. These estimates are derived primarily from the available studies that addressed cost impacts of mandatory COOL.

TABLE 3—ESTIMATES OF FIRST-YEAR IMPLEMENTATION COSTS PER AFFECTED INDUSTRY SEGMENT

[Million dollars]

	Beef	Pork	Lamb & goat	Chicken	F & V	Peanuts, pecans, & macadamia nuts [1]	Total
Producer	305	105	10	0	30	0	450
Intermediary	373	101	5	139	497	0	1,115
Retailer	574	93	5	44	235	0	952
Total	1,252	299	21	183	763	0	2,517

[1] Indicates a value greater than zero, but less than 0.5.

Assumptions and procedures underlying the cost estimates are described fully in the discussion of the ''upper range'' estimates presented in the PRIA. Changes from the PRIA estimates are highlighted herein. One of the major changes is that all the data from the PRIA has been updated by using more recent data.

Considering all producer segments together, we have estimated a $9 per head cost to cattle producers to implement the rule. This estimate reflects the expectation of relatively small implementation costs at the cow-calf level of production, but relatively higher costs each time cattle are resold. Typically, fed steers and heifers change hands two, three, or more times from birth to slaughter, and each exchange will require the transfer of country of origin information. Thus, total costs for beef producers are estimated at $305 million, a 16 percent reduction from the PRIA upper range estimate due to the lower level of slaughter in 2006 and the slightly lower per head cost estimate. In

addition, as provided in the 2008 Farm Bill, in the case of livestock, a producer affidavit shall be considered acceptable evidence on which a packer may rely to initiate an origin claim.

We assume that intermediaries will face increased costs associated with tracking cattle and the covered beef commodities produced from these animals and providing this information to subsequent purchasers, which may be other intermediaries or covered retailers. Incremental costs for beef packers may include additional capital and labor expenditures to enable cattle from different origins to be tracked for slaughter, fabrication, and processing. As previously mentioned, under this interim final rule, if an animal was born, raised, and/or slaughtered in the United States and was not imported for immediate slaughter as defined in § 65.180, the origin of the resulting meat products derived from that animal may be designated as Product of the United States, Country X, and/or (as applicable) Country Y where Country X and Country Y represent the actual or possible countries of foreign origin. In addition, the rule also provides for flexibility in labeling ground products by allowing the notice of country of origin to include a list of countries contained therein or that may reasonably be contained therein. However, we believe that some segregation will still occur in order to provide the marketplace with product strictly of United States origin. Considering the costs likely to be faced by intermediaries in the beef sector, $0.015 per pound is adopted as an estimate of costs, which is consistent with estimates from the available studies. Total costs are thus estimated at $373 million, a 31 percent reduction from the PRIA upper range estimate due to the reduced estimate of the volume of production affected and the slightly lowered per pound cost estimate. The cost per pound was lowered due to the increasing use of pre-packaged and pre-labeled beef products, which lowers costs for retailers as well as intermediaries.

The implementation costs are estimated at $0.07 per pound for beef retailers, for a total of $574 million. This figure reflects the costs for individual package labels, meat case segmentation, record keeping and information technology changes, labor, training, and auditing. In addition, there likely will be increased costs for in-store butcher department operations related to cutting, repackaging, and grinding operations. As with the estimate for intermediaries, the estimate for retailers is reduced by 10 percent from the PRIA upper range estimate.

Total costs for affected entities in the beef sector are thus estimated at $1,252 million, a 26 percent reduction from the PRIA estimate.

Costs for pork producers are estimated at $1.00 per head. With annual slaughter of 104.8 million head, total costs for producers are estimated at $105 million, which is a 30 percent reduction from the PRIA estimate due to a slightly lower per head slaughter estimate.

Costs for all pork sector intermediaries (including handlers, processors, and wholesalers) should be similar to costs for beef sector intermediaries. These estimated costs for pork industry intermediaries are $0.015 per pound, for a total of $101 million, a reduction of $267 million from the PRIA estimate. The reduction is due to the downward revision of the volume of pork production estimated to be affected at the intermediary level and a slightly lower per pound cost estimate.

Costs for retailers of pork are estimated to be $0.04 per pound. The per-pound cost estimate for pork is lower than for beef primarily to reflect the higher costs incurred by in-store grinding operations to produce ground beef. Although ground pork may also be produced in-store, most ground pork is processed into sausage and other products not covered by the rule. Total estimated costs for pork retailers are $93 million, a 40 percent decrease from the PRIA estimate. Total costs for the pork sector are estimated at $299 million, which is $374 million less than the PRIA upper range estimate.

Costs per head for lamb and goat producers are estimated at $3.50 per head. Total costs for lamb and goat producers are estimated at $10 million, which is $5 million less than the PRIA estimate even with the addition of goat.

Intermediaries in the lamb and goat sector will likely face per-pound costs similar to costs faced by beef and pork sector intermediaries, which are estimated at $0.015 per pound. Total costs for lamb and goat sector intermediaries are thus estimated at $5 million, which is $2 million less than the PRIA upper range estimate.

Costs to retailers for lamb and goat should be similar to costs borne for pork, which was estimated at $0.04 per pound. Total costs for retailers of lamb and goat are estimated at $5 million, which is $4 million lower than the PRIA upper range estimate.

Summing the estimates for producers, intermediaries, and retailers results in estimated costs of $21 million for the lamb and goat industries. This total is $11 million less than the PRIA upper range estimate even with the inclusion of goat as a covered commodity.

Costs for chicken producers who grow-out chicken for an integrator (the firm that will slaughter and possibly further process the chickens) is $0.00 because these individuals do not own or control the movement of the chickens they are raising. All chickens produced are owned, and their movement is controlled, by the integrator, which is the main intermediary in the chicken supply chain. We do not expect that producers will need change any current practices and thus will not incur any additional costs due to this rule.

Costs for the intermediaries in the chicken supply chain are estimated to be $0.005 per pound. Since the integrators own their chickens from the time they hatch to time they are sold to a retailer or distributor, there is no need to ''collect'' country of origin information. Costs to the integrator are mainly due to system changes to incorporate COOL information into existing recordkeeping systems and supplying required information to the retailers and food distributors. Approximately 69 percent of chicken covered by COOL is supplied directly to the retailer from the integrator. The vast majority, if not all, of the chicken supplied by the integrator is pre-labeled. The bulk of the rest is supplied by the distributors whose costs will be slightly higher since they are receiving product from integrators and selling product to retailers. Total costs for intermediaries are estimated at $139 million.

Costs for retailers are estimated to be $0.0025 per pound. As noted above, most, if not all, chicken is purchased directly from integrators and will have been pre-labeled. This will significantly lower the retailers cost in terms of meeting COOL requirements. Most of the costs retailers will bear will be from distributors. Total cost for retailers are $44 million.

Total estimated costs for chicken producers, intermediaries, and retailers are $183 million. Since chicken costs were not included in the PRIA, the total estimated costs for chicken is an increase in the total cost of covered commodities in the PRIA.

Although fruit, vegetable, and ginseng producers maintain the types of records that will be required to substantiate United States origin claims, it is believed that this information is not universally transferred by producers to purchasers of their products. Producers will have to supply this type of information in a format that allows handlers and processors to maintain country of origin information so that it can be accurately transferred to retailers.

For fruit, vegetable, and ginseng producers, costs are estimated at $0.00025 per pound to make and substantiate COOL claims, which equates to $0.01 for a 40 pound container. Because fruits and vegetables only have a single point of origin, which is where they are grown, substantiating country of origin claims is substantially simpler for fruit and vegetable producers than for livestock producers. Total costs for fruit, vegetable, and ginseng producers are estimated at $30 million, which is $6 million higher than the PRIA upper range estimate for fruits and vegetables due to higher levels of production in 2006.

Fruit, vegetable, and ginseng intermediaries will shoulder a sizeable portion of the burden of tracking and substantiating country of origin information. Intermediaries will need to obtain information to substantiate COOL claims by producers and suppliers; maintain COOL identity throughout handling, processing, and distribution; and supply retailers with COOL information through product labels and records. The estimated cost for these activities for fruit and vegetable sector intermediaries is $0.005 per pound, resulting in total estimated costs of $497 million. This amount is $83 million less than the PRIA upper range estimate because of the lowered estimate of the volume of production affected by the rule.

Because intermediaries will bear a large portion of the burden of COOL tracking and labeling, implementation costs for retailers will be reduced. It is believed that virtually all frozen fruits and vegetables will be labeled by suppliers, thus imposing minimal incremental costs for retailers. In addition, over 60 percent of fresh fruits and vegetables arrive at retail with labels or stickers that may be used to provide COOL information. It is believed that fresh fruit and vegetable suppliers will provide COOL information on these labels and stickers, again imposing minimal incremental costs for retailers. Costs for retailers are estimated at $0.005 per pound of fresh and frozen fruits and vegetables, $0.005 less than the amount assumed for the PRIA upper range estimates. The lower per-unit cost is supported by the revised recordkeeping requirements. For pre-labeled products, the label itself is sufficient evidence on which the retailer may rely to establish a product's country of origin. For these pre-labeled products, the product label or sticker carries the required country of origin information, while the recordkeeping system maintains the information necessary to track the product back through the supply chain. Total costs for fruits, vegetables, and ginseng at retail are estimated at $235 million, a reduction of $485 million from the PRIA. The lowered cost estimate is attributable to both a lowered estimate of the volume of affected production and a lowered estimated cost per unit for retailers.

Costs per pound for each segment of the peanut, macadamia nut, and pecan industries is estimated at $0.00025 for producers, $0.005 for intermediaries and $0.015 for retailers. As a result, costs for the peanut, macadamia nut, and pecan industries are estimated at about $400,000, with negligible costs for producers and costs of less than $200,000 at the intermediary and retailer levels. Total upper range costs for all the peanut sectors were estimated at $8 million in the PRIA. The reduced estimates are due to the drastically lowered estimates of the volumes of affected peanut, macadamia nut, and pecan production.

Total incremental costs are estimated for this rule at $450 million for producers, $1,115 million for intermediaries and $952 million for retailers for the first year. Total incremental costs for all supply chain participants are estimated at $2,517 million for the first year, a reduction of $1,365 million from the PRIA upper range estimate even though a number of new commodities have been added for COOL coverage. The reduced estimates are due to lower volumes of affected products at the intermediary as well as the retailer level and slightly lower cost estimates.

There are wide differences in average estimated implementation costs for individual entities in different segments of the supply chain (Table 4). With the exception of a small number of chicken producers, producer operations are single-establishment firms. Thus, average estimated costs per firm and per establishment are somewhat similar. Retailers subject to the rule operate an average of just over nine establishments per firm. As a result, average estimated costs per retail firm also are just over nine times larger than average costs per establishment.

TABLE 4—ESTIMATED IMPLEMENTATION COSTS PER FIRM AND ESTABLISHMENT

	Cost estimates per	
	Firm	Establishment
Producer	$376	$376
Intermediary	53,948	50,598
Retailer	235,551	26,149

Average estimated implementation costs per producer are relatively small at $376. This is $67 per firm lower than the PRIA estimates. The difference is attributable to the reduction in the number of peanut producers. Estimated costs for intermediaries are substantially larger, averaging $53,948 per firm and $50,598 per establishment. The average cost per firm is $3,862 higher than the PRIA upper range estimated cost, with the higher cost attributable to the lower number of estimated firms. Similarly, the average cost per intermediary establishment is $7,996 higher than PRIA the upper range estimate due to the lower number of establishments. At an average of $235,551 per firm, retailers have the highest average estimated costs per firm. This is $160,538 lower than the PRIA upper range estimate. The lower estimated cost per retailer is attributable to the reduction in the number of retailing firms from the PRIA time period and the lower total estimated costs. Retailers' average estimated costs per establishment are $26,149. This amount is $21,924 lower than the PRIA upper range estimate.

The costs per firm and per establishment represent industry averages for aggregated segments of the supply chain. Large firms and establishments likely will incur higher costs relative to small operations due to the volume of commodities that they handle and the increased complexity of their operations. In addition, different types of businesses within each segment are likely to face different costs. Thus, the range of costs incurred by individual businesses within each segment is expected to be large, with some firms incurring only a fraction of the average costs and other firms incurring costs many times larger than the average.

Average costs per producer operation can be calculated according to the commodities that they produce (Table 5). Average estimated costs are lowest for lamb and goat producers ($128) and highest for hog operations ($1,599). Again, chicken ''producers'' do not own or control the movement of the birds they are growing-out. We do not expect that the rule will result in any changes in their current production practices, and thus their average cost is zero. Because average production volume per hog operation is large relative to other types of producer operations, estimated costs per hog operation are large relative to other producer operations.

TABLE 5—ESTIMATED FIRST-YEAR IMPLEMENTATION COSTS PER PRODUCER OPERATION

Producer	Average cost
Beef	$314
Lamb & Goats	128
Pork	1,599
Chicken	0
Fruits, Vegetables & Ginseng	376
Peanuts, Pecans, & Macadamia Nuts	258

It is believed that the major cost drivers for the rule occur when livestock or covered commodities are transferred from one firm to another, when livestock or covered commodities are commingled in the production or marketing process, and when products are assembled and then redistributed to retail stores. In part, some requirements of the rule will be accomplished by firms using essentially the same processes and practices as are currently used, but with information on country of origin claims added to the processes. This adaptation generally would require relatively small marginal costs for recordkeeping and identification systems. In other cases, however, firms may need to revamp current operating processes to implement the rule. For example, a processing or packing plant may need to sort incoming products by country of origin in addition to weight, grade, color, or other quality factors. This may require adjustments to plant operations, line processing, product handling, and storage. Ultimately, it is anticipated that a mix of solutions will be implemented by industry participants to effectively meet the requirements of the rule. Therefore, it is anticipated that direct, incremental costs for the rule likely will fall within a reasonable range of the estimated total of $2,517 million.

In the PRIA, one regulatory alternative considered by AMS would be to narrow the definition of a processed food item, thereby increasing the scope of commodities covered by the rule. This alternative is not adopted in this rule. An increase in the number of commodities that would require COOL would increase implementation costs of the rule with little expected economic benefit. Additional labeling requirements may also slow some of the innovation that is occurring with various types of value-added, further processed products.

A different regulatory alternative would be to broaden the definition of a processed food item, thereby decreasing the scope of commodities covered by the rule. Accordingly, such an alternative would decrease implementation costs for the rule. At the retail level and to a lesser extent at the intermediary level, cost reductions would be at least partly proportional to the reduction in the volume of production requiring retail labeling, although if the broader definition excluded products for which incremental costs are relatively high, such as beef products, the impact could be more than proportional. Start-up costs for retailers and many intermediaries likely would be little changed by a narrowing of the scope of commodities requiring labeling because firms would still need to modify their recordkeeping, production, warehousing, distribution, and sales systems to accommodate the requirements of the rule for those commodities that would require labeling. Ongoing maintenance and operational costs, however, likely would decrease in some proportion to a decrease in the number of items covered by the rule. On the other hand, implementation costs for the vast majority of agricultural producers would not be affected by a change in the definition of a processed food item. This is because it is assumed that virtually all affected producers would seek to retain the option of selling their products through supply channels for retailers subject to the rule. Agricultural producers generally would have little influence on the ultimate product form in which their products are sold at retail, and thus would be little affected by changes in the definition of a processed food item.

The definition of a processed food item developed for this rule has taken into account comments from affected entities and has resulted in excluding products that would be more costly and troublesome for retailers and suppliers to provide country of origin information. Total incremental costs for this rule are estimated at $1,365 million less than the upper range costs estimated in the PRIA, with much of the reduction attributable to the revised definition of a processed food item.

Net Effects on the economy: The previous section estimated the direct, incremental costs of the rule to the affected firms in the supply chains for the covered commodities. While these costs are important to those directly involved in the production, distribution, and marketing of covered commodities, they do not represent net costs to the United States economy or net costs to the affected entities for that matter.

With respect to assessing the net effect of this rule on the economy as a whole, it is important to understand that a significant portion of the costs directly incurred by the affected entities take the form of expenditures for additional production inputs, such as payments to others whether for increased hours worked or for products and services provided. As such, these direct, incremental costs to affected entities represent opportunity costs of the rule, but they do not represent net losses to the economy. As a result, the direct costs incurred by the participants in the supply chains for the covered commodities do not measure the net impact of this rule on the economy as a whole. Instead, the relevant measure of net impact is the extent to which the rule reduces the amount of goods and services that can be produced throughout the United States economy from the available supply of inputs and resources.

Even from the perspective of the directly affected entities, the direct, incremental costs do not present the whole picture. Initially, the affected entities will have to incur the operational adjustments and expenses necessary to implement the rule. However, over time as the economy adjusts to the requirements of the rule, the burden facing suppliers will be reduced as their production level and the prices they receive change. What is critical in assessing the net effect of this rule on the affected entities over the longer run is to determine the extent to which the entities are able to pass these costs on to others and consequently how the demand for their commodities is affected.

Conceptually, suppose that all the increases in costs from the rule were passed on to consumers in the form of higher prices and that consumers continued to purchase the same quantity of the affected commodities from the same marketing channels. Under these conditions, the suppliers of these commodities would not suffer any net loss from the rule even if the increases in their operating costs were quite substantial. However, other industries might face losses as consumers would spend less on other commodities. It is unlikely, however, absent the rule leading to changes in consumers' preferences for the covered commodities that consumers will maintain their consumption of the covered commodities in the face of increased prices. Rather, many or most consumers will likely reduce their consumption of the covered commodities. The resulting changes in consumption patterns will in turn lead to changes in production patterns and the allocation of inputs and resources

throughout the economy. The net result, once all these changes have occurred, is that the total amount of goods and services produced by the United States economy will be less than before.

To analyze the effect of the changes resulting from the rule on the total amount of goods and services produced throughout the United States economy in a global context, a computable general equilibrium (CGE) model developed by the Economic Research Service (ERS) is utilized (Ref. 4). The ERS CGE model includes all the covered commodities and the products from which they are derived, as well as non-covered commodities that will be indirectly affected by the rule, such as feed grains. Even though COOL for fish was implemented in 2004, the costs for fish and shellfish are included here to account for the cross-commodity effects between covered commodities. Ignoring the costs for fish and shellfish would result in assuming that COOL did not apply to fish and the cross-commodity effects may be distorted. Peanuts, however, are aggregated with oilseeds in the model, and there is no meaningful way to modify the model to account for the impacts of the rule on peanut production, processing, and consumption. Given the revised definition of a processed food item, almost all peanut products are exempt from this rule. As a consequence, the peanut sector accounts for only a negligible fraction of the total estimated incremental costs for all directly affected entities. Thus, omitting the small direct costs on the peanut sector is expected to have negligible impacts with respect to estimated net impacts on the overall United States economy.

The ERS CGE model traces the impacts from an economic ''shock,'' in this case a permanent incremental increase in costs of production, through the U.S agricultural sector and the U.S economy to the rest of the world and back through the inter-linking of economic sectors. By taking into account the linkages among the various sectors of the United States and world economies, a comprehensive assessment can be made of the economic impact on the United States economy of the rule implementing COOL. The model reports economic changes resulting after a ten-year period of adjustment.

The results of this analysis indicate that the rule implementing COOL after the economy has had a period of ten years to adjust will have a smaller net impact on the overall United States economy than the incremental costs for directly affected entities for the first year. Under the assumption that COOL will not change consumers' preferences for the covered commodities, it is estimated that the overall net costs to the United States economy due to the rule, in terms of a reduction in consumers' purchasing power, will be $211.9 million. This represents the net cost to the United States economy after all transfers and adjustments in consumption and production patterns have occurred.

Overall net costs to the United States economy after a decade of adjustment are significantly smaller than the implementation costs to directly affected firms. This result does not imply that the implementation costs for directly affected firms have been substantially reduced from the initial estimates. While some of the increase in their costs will be offset by reduced production and higher prices over the longer term, the suppliers of the covered commodities will still bear direct implementation costs.

The estimates of the overall net costs to the United States economy are based on the estimates of the incremental increases in operating costs to the affected firms. The model does not permit supply channels for covered commodities that require country of origin information to be separated from supply channels for the same commodities that do not require COOL. Thus, the direct cost impacts must be adjusted to accurately reflect changes in operating costs for all firms supplying covered commodities. Table 6 reports these adjusted estimates in terms of their percentage of total operating costs for each of the directly affected sectors. The percentages used are based on the estimate of the percentage change in operating costs for the entire supply channel and are adjusted between the various segments of each covered commodities' supply chain (producers, processors, importers, and retailers) based on the estimate of how the costs of the regulation will be distributed among them. As a result, the cost changes shown in Table 6 only approximate the direct cost estimates previously described.

Table 6.--Estimated Increases in Operating Costs by Supply Chain Segment and Industry

		Beef, Lamb, & Goat	Pork	Chicken	Fish	Fresh Produce
		percent change				
Farm Supply	Domestic	1.30	1.30	0.00	0.60	0.10
	Imported	1.30	1.30	1.00	0.60	0.10
Processing	Domestic	2.10	1.00	1.10	n.a.	n.a.
	Imported	2.10	1.00	1.10	n.a.	n.a.
Retail	Domestic	2.20	0.40	0.60	0.40	0.60
	Imported	2.20	0.40	0.60	0.40	0.60

n.a. - Not Applicable.

In addition, it is assumed that domestic and foreign suppliers of the affected commodities located at the same level or segment of the supply chain face the same percentage increases in their operating costs. In reality, the incremental costs for some imported covered commodities may be lower, as a portion of those products already enter the United States with country of origin labels.

The percentage changes in operating costs reported in Table 6 differ from the percentage changes in operating costs reported for the High Cost scenario as listed in Table 8 in the PRIA. The differences in percentage changes reported in the PRIA and those reported here are attributable to changes in implementation costs of the rule as well as recalibration of our estimates of total operating costs for the various segments of the supply channels of the directly affected sectors. Thus, for example, even though changes in the rule reduced our estimate of the incremental costs incurred by intermediaries and retailers in the beef and lamb sectors, the recalibration of our estimate of their operating costs causes the estimated percentage change in costs applied to processing and retailing segments of these sectors to increase.

As discussed above, consumption and production patterns will change as the incremental increases in operating costs outlined above are passed on, at least partially, to consumers in the form of higher prices by the affected firms. The increases in the prices of the covered commodities will in turn cause exports and domestic consumption and ultimately domestic production to fall. The results of our analysis indicate that United States production of all the covered commodities combined will decline 0.02 percent and that the overall price level for these commodities (a weighted average index of the prices received by suppliers for their commodities) will increase by 0.02 percent.

The structure of the model does not enable changes in net revenues to suppliers of the covered commodities to be determined. Likewise, the model cannot be used to determine the extent to which the reductions in production arise from some firms going out of business or all firms cutting back on their production. To provide an indication of what effect this will have on the suppliers of the covered commodities, changes in revenues using the model results are estimated. The result of this calculation shows that revenues to suppliers of the covered commodities will decrease by $461 million. This decrease in revenue is due to the decrease in estimated revenues in all the covered commodities; all affected sectors show a small revenue decrease due to the increased costs of the rule.

The costs of the rule will not be shared equally by all suppliers of the covered commodities. The distribution of the costs of the rule will be determined by several factors in addition to the direct costs of complying with the rule. These are the availability of substitute products not covered by the rule and the relative competitiveness of the affected suppliers with respect to other sectors of the U.S. and world economies.

Although the increases in operating costs are the initial drivers behind the changes in consumption and production patterns resulting from this rule, they do not, as can be seen by examining Table 7, determine which commodity sector will be most affected. Table 7 contains the percentage changes in prices, production, exports, and imports for the three main segments of the marketing chain by covered commodities.

TABLE 7—ESTIMATED IMPACT OF RULE ON U.S. PRODUCTION, PRICES AND TRADE OF IMPACTED SECTORS

Commodity	Price	Production	Exports (volume)	Imports (volume)
	Percent change from base year			
Fruits and Vegetables	0.21	−0.20	−0.39	0.04
Cattle and Sheep	0.52	−0.94	−1.18	0.25
Broilers	0.03	−0.56	−0.36	−0.03
Hogs	0.26	−0.46	−0.60	0.16
Beef and Veal	0.99	−1.09	−1.93	−2.32
Chicken	0.82	−0.90	−1.54	0.29
Pork	0.68	−0.81	−1.37	−0.86
Fish	0.50	−0.68	−0.06	0.04

As mentioned previously, peanuts, macadamia nuts, and pecans are included with oilseed products in the ERS CGE model. As a result, they are not included in this analysis.

The rule increases operating costs for the supply chains of the covered commodities. As shown in Table 7, the increased costs result in higher prices for these products. The quantity demanded at these higher prices falls, with the result that the production of all of the covered commodities decreases.

Imports of fruits, vegetables, cattle, sheep, chicken, fish, and hogs increase because United States domestic suppliers respond more to changes in their operating costs than do foreign suppliers. The resulting gap between the supply response of United States and foreign producers provides foreign suppliers with a cost advantage in United States markets that enables them to increase their exports to the United States even though they face similar increases in operating costs.

To put these impacts in more meaningful terms, the percentage changes reported in Table 7 were converted into changes in current prices and quantities produced, imported, and exported (Table 8). The base values in Table 8 vary from those reported in Table 2 above because they are derived from projected levels reported in the USDA Agricultural Baseline for 2006 (Ref. 18), while values in Table 2 represent actual reported values for 2006 as compiled by USDA's NASS. Baseline values were used to accommodate the structure of the model.

Increases in prices for all covered commodities are small, less than one cent per pound. Production changes are similarly small, less than 100 million pounds for all covered commodities. The declines in the production of cattle, broilers, and hogs mirrors the declines in the production of beef, chicken, and pork.

TABLE 8—ESTIMATED CHANGES IN U.S. PRODUCTION PRICES, AND TRADE FOR AFFECTED COMMODITIES

Indicator	Units	Base	Change from base
U.S. Production:			
Veg. & Fruits	Mil. Lbs	191,523	−383
Cattle	Thous. Hd	32,229	−303
Broilers	Mil. Hd	6,503	−36
Hogs	Thous. Hd	103,015	−474
Beef	Mil. Lbs	24,784	−270
Chicken	Mil. Lbs	35,733	−322
Pork	Mil. Lbs	20,706	−168
Fish	Mil. Lbs	7,997	−54
U.S. Price:			
Veg. & Fruits	$/Lb	0.25	0.0005
Cattle and sheep	$/Cwt	89.55	0.4657
Broilers	$/Lb	0.43	0.0001
Hogs	$/Cwt	49.62	0.1290
Beef and veal	$/Lb	4.09	0.0405
Chicken	$/Lb	1.74	0.0143
Pork	$/Lb	2.83	0.0192
Fish	$/Lb	0.93	0.0047
U.S. Exports (volume):			
Fruits & Vegetables	Mil. Lbs	19,990	−78
Beef	Mil. Lbs	697	−13
Chicken	Mil. Lbs	5,203	−80
Pork	Mil. Lbs	2,498	−34
Fish	Mil. Lbs	6,384	−4
U.S. Imports (volume):			
Fruits & Vegetables	Mil. Lbs	37,573	15
Beef	Thous. Hd	2,502	−58
Chicken	Mil. Hd	0	0
Pork	Thous. Hd	5,741	−49

TABLE 8—ESTIMATED CHANGES IN U.S. PRODUCTION PRICES, AND TRADE FOR AFFECTED COMMODITIES—Continued

Indicator	Units	Base	Change from base
Fish	Mil. Lbs	10,158	4

Sources: Base values for meat and fruits and vegetables come from USDA Agricultural Baseline Projections to 2016, Staff Report WAOB–2007–1. USDA, Office of the Chief Economist, 2007. Changes are derived from applying percentage changes obtained from the ERS CGE model to the base values. [a] Live animal estimates derived from baseline values for meat product using 2005 average dress weight for cattle, hogs and broilers. [b] Base values for fish come from Fisheries of the United States, 2005. National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 2006. [c] Fruit and vegetable price derived by dividing the total value of fruit and vegetable production by total quantity of fruit and vegetables produced as reported in USDA baseline for 2005. [d] Fish price derived by dividing total value of commercial and aquaculture production, excluding other, by total commercial and aquaculture production.

The estimated changes in prices and production cause revenues for the fruit and vegetable industry to increase an estimated $5 million. The small revenue increase in the fruit and vegetable industry is attributed to the fact that the price increase just offsets the production decrease. The estimated changes in production and prices result in revenues decreasing by $94 million for beef cattle producers while revenues from production and sale of beef decrease by an estimated $112 million dollars. Revenues for broiler production decline by $91 million and revenues for the production and sale of chicken decrease by $54 million. In addition, revenues for hog production decrease by $21 million and revenues from production and sale of pork decrease by $79 million. Finally, revenues to the fish industry fall by nearly $14 million.

The increase in the prices of all affected commodities causes exports to decline (Table 8). These declines are small; they are for the most part smaller than the declines in United States production of these commodities.

The ERS CGE model assumes that firms behave as though they have no influence on either their input or output prices. On the other hand, a model that assumed that processors could influence their input and output prices could find that prices received by agricultural producers decreased because processors passed their cost increases down to their suppliers rather than increase the price they charged their customers.

The estimates of the net economic impact of the rule on the United States are based on the assumption that country of origin labeling does not shift consumer demand toward the covered commodities of United States origin. This assumption is based on the earlier finding that there was no compelling evidence to support the view that mandatory COOL will increase the demand for United States products. Despite this lack of evidence, we examine how much of a shift or increase in demand for commodities of United States origin would have to occur to offset the costs imposed on the economy by the rule. Consumer demand for the covered commodities would have to increase 0.90 percent to offset the costs to the economy of COOL as outlined in the rule.

The hypothetical 0.90 percent increase in demand for covered commodities represents the overall increase (shift) in demand from all outlets. If there were such a demand increase for domestically produced covered commodities, however, it would presumably occur at those retailers required to provide country of origin information. As previously discussed, the percentage share of covered commodities sold by retailers subject to this rule is estimated at 47.0 percent of total consumption. This indicates that demand at covered retailers would need to increase by 1.9 percent for purposes of this hypothetical exercise, assuming no change in demand at other domestic outlets or in export demand.

As previously mentioned, the estimates of the overall net economic effects of the rule are derived from a CGE model developed by ERS. The results from this model show the changes in production and consumption patterns after the economy has adjusted to the incremental increase in costs (medium run results). Such changes occur over time and the economy does not adjust instantaneously.

The results of this analysis describe and compare the old production and consumption patterns to the new ones, but do not reflect any particular adjustment process. The purpose of using the ERS CGE model is not to forecast what prices and production will be over any particular time frame, but to explore the net implications of COOL on the United States economy and capture the direction of the changes.

The ERS CGE model is global in the sense that all regions in the world are covered. Production and consumption decisions in each region are determined within the model following behavior that is consistent with economic theory. Multilateral trade flows and prices are determined simultaneously by world market clearing conditions. This permits prices to adjust to ensure that total demand equals total supply for each commodity in the world.

The general equilibrium feature of the model means that all economic sectors—agricultural and non-agricultural—are included. Hence, resources can move among sectors, thereby ensuring that adjustments in the feed grains and livestock sectors, for example, are consistent with adjustments in the processed sectors.

The model is static and this implies that gains (or losses) from stimulating (or inhibiting) investment and productivity growth are not captured. The model allows the existing resources to move among sectors, thereby capturing the effects of re-allocation of resources that are the result of policy changes. However, because the model fixes total available resources, it likely significantly underestimates the long-run effects of policies on aggregate output. For example, the 10-year average real growth of GDP between 1997 and 2007 was approximately 3.1% (Ref 8). If applied to the next 10 years, this implies an economy approximately 36% larger at the end of this analysis than at the beginning of this analysis.

The ERS CGE model uses data from the Global Trade Analysis Project (GTAP database, version 7.2). The database represents the world as of 2004 and includes information on macroeconomic variables, production, consumption, trade, demand and supply elasticities, and policy measures. The GTAP database includes 57 commodities and 101 countries/regions. For this analysis, the regions were represented by the following country/regions: The United States, Canada, Mexico, the European Union-25 (EU), Oceania, China, Other East Asian Countries, India, Other South Asian Countries, South America and Central America, OPEC Countries, Russia, Africa and the rest of the World. The agricultural sector is subdivided into the following 7 commodity aggregations: Rice, wheat, corn, other feed grains (barley, sorghum), soybeans, sugar (cane

and beets), vegetables and fresh fruits, other crops (cotton, peanuts), cattle and sheep, hogs and goats, poultry, and fish. The food processing sectors are subdivided into the following 6 commodity aggregations, bovine cattle and sheep meat, pork meat, chicken meat, vegetable oils and fats, other processed food products, beverages and tobacco, and fish. The remaining sectors in the database were represented by 18 aggregated non-agricultural sectors.

Interim Final Regulatory Flexibility Analysis

This rule has been reviewed under the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq*.). The purpose of RFA is to consider the economic impact of a rule on small businesses and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the marketplace. The Agency believes that this rule will have a significant economic impact on a substantial number of small entities. As such, the Agency has prepared the following regulatory analysis of the rule's likely economic impact on small entities pursuant to the RFA. The Comments and Responses section lists the comments received on the preliminary RFA and provides the Agency's responses to the comments.

The rule is the direct result of statutory obligations to implement the COOL provisions of the 2002 and 2008 Farm Bills. The Act requires USDA to issue regulations to implement a mandatory COOL program for the remaining covered commodities not later than September 30, 2008. The intent of this law is to provide consumers with additional information on which to base their purchasing decisions. Specifically, the law imposes additional Federal labeling requirements for covered commodities sold by retailers subject to the law. Covered commodities include muscle cuts of beef (including veal), lamb, pork, chicken, and goat; ground beef, ground lamb, ground pork, ground goat, and ground chicken; perishable agricultural commodities; ginseng; peanuts; macadamia nuts; and pecans.

Under preexisting Federal laws and regulations, COOL is not universally required for the commodities covered by this rule. In particular, labeling of United States origin is not mandatory, and labeling of imported products at the consumer level is required only in certain circumstances. Thus, the Agency has not identified any Federal rules that would duplicate or overlap with this rule.

Many aspects of the mandatory COOL provisions are prescriptive and provide little regulatory discretion in rulemaking. The law requires a statutorily defined set of food retailers to label the country of origin of covered commodities. The law also prohibits USDA from using a mandatory identification system to verify the country of origin of covered commodities. However, the rule provides flexibility in allowing market participants to decide how best to implement mandatory COOL in their operations. Market participants other than those retailers defined by the statute may decide to sell products through marketing channels not subject to the rule. Taking into account comments received on the proposed rule, the rule decreases the length of time that records are required to be kept, providing some relief to affected entities both large and small. A complete discussion of the information collection and recordkeeping requirements and associated burdens appears in the Paperwork Reduction Act section. In addition, although recent amendments have added additional covered commodities, the number of products required to be labeled is reduced because the definition of a processed food item has been broadened, thus providing additional regulatory relief.

The objective of the rule is to regulate the activities of retailers (as defined by the law) and their suppliers so that retailers will be able to fulfill their statutory obligations. The rule requires retailers to provide country of origin information for all of the covered commodities that they sell. It also requires all firms that supply covered commodities to these retailers to provide the retailers with the information needed to correctly label the covered commodities. In addition, all other firms in the supply chain for the covered commodities are potentially affected by the rule because country of origin information will need to be maintained and transferred along the entire supply chain. In general, the supply chains for the covered commodities consist of farms, processors, wholesalers, and retailers. A listing of the number of entities in the supply chains for each of the covered commodities can be found in Table 1.

Retailers covered by this rule must meet the definition of a retailer as defined by the Perishable Agricultural Commodities Act of 1930 (PACA). The PACA definition includes only those retailers handling fresh and frozen fruits and vegetables with an invoice value of at least $230,000 annually. Therefore, the number of retailers affected by this rule is considerably smaller than the total number of retailers nationwide. In addition, there is no requirement that firms in the supply chain must supply their products to retailers subject to the rule.

Because country of origin information will have to be passed along the supply chain and made available to consumers at the retail level, it is assumed that each participant in the supply chain as identified in Table 1 will likely encounter recordkeeping costs as well as changes or modifications to their business practices. Absent more detailed information about each of the entities within each of the marketing channels, it is assumed that all such entities will be affected to some extent even though some producers and suppliers may choose to market their products through channels not subject to the requirements of this rule. Therefore, it is estimated that approximately 1,256,000 establishments owned by approximately 1,222,000 firms will be either directly or indirectly affected by this rule. The only changes from the Preliminary Regulatory Impact Analysis (PRIA) are reductions in the numbers of affected firms and establishments in the peanut sector and the addition of chicken, goat, ginseng, macadamia nuts, and pecans as covered commodities. These changes and the use of more up-to-date information resulted in the number of establishments and firms decreasing from the PRIA.

This rule potentially will have an impact on all participants in the supply chain, although the nature and extent of the impact will depend on the participant's function within the marketing chain. The rule likely will have the greatest impact on retailers and intermediaries (handlers, processors, wholesalers, and importers), while the impact on individual producers is likely to be relatively small.

The direct incremental costs are estimated for the rule at approximately $2,517 million. The decrease in the direct incremental cost in the rule as compared to the PRIA is mainly the result of broadening the definition of a processed food item, which exempts more products from the labeling requirements of the rule.

There are two measures used by the Small Business Administration (SBA) to identify businesses as small: Sales receipts or number of employees. In terms of sales, SBA classifies as small those grocery stores with less than $25 million in annual sales and specialty food stores with less than $6.5 million

in annual sales (13 CFR 121.201). Warehouse clubs and superstores with less than $25 million in annual sales are also defined as small. SBA defines as small those agricultural producers with less than $750,000 in annual receipts. Of the other businesses potentially affected by the rule, SBA classifies as small those manufacturing firms with less than 500 employees and wholesalers with less than 100 employees.

Retailers: While there are many potential retail outlets for the covered commodities, food stores, warehouse clubs, and superstores are the primary retail outlets for food consumed at home. In fact, food stores, warehouse clubs, and superstores account for 75.6 percent of all food consumed at home (Ref. 9). Therefore, the number of these stores provides an indicator of the number of entities potentially affected by this rule. The 2002 Economic Census (Ref. 10) shows there were 42,318 food store, warehouse club, and superstore firms operated for the entire year. Most of these firms, however, would not be subject to the requirements of this rule.

The law defines the term retailer as having the meaning given that term in section 1(b) of the Perishable Agricultural Commodities Act of 1930 (PACA). Thus, under this interim final rule, a retailer is defined as any person licensed as a retailer under PACA. The number of such businesses is estimated from PACA data (Ref. 11). The PACA definition of a retailer includes only those retailers handling fresh and frozen fruits and vegetables with an invoice value of at least $230,000 annually. Therefore, the number of retailers affected by this rule is considerably smaller than the number of food retailers nationwide. USDA data indicate that there are 4,040 retail firms as defined by PACA that would thus be subject to the rule. As explained below, most small food store firms have been excluded from mandatory COOL based on the PACA definition of a retailer.

The 2002 Economic Census data provide information on the number of food store firms by sales categories. Of the 42,318 food stores, warehouse club, and superstore firms, an estimated 41,629 firms had annual sales meeting the SBA definition of a small firm plus 689 other firms that would be classified as above the $25 million threshold. USDA has no information on the identities of these firms, and the PACA database does not identify firms by North American Industry Classification System code that would enable matching with Economic Census data. USDA assumes, however, that all or nearly all of the 689 large firms would meet the definition of a PACA retailer because most of these larger food retailers likely would handle fresh and frozen fruits and vegetables with an invoice value of at least $230,000 annually. Thus, an estimated 83 percent (3,351 out of 4,040) of the retailers subject to the rule are small. However, this is only 8.0 percent of the estimated total number of small food store retailers. In other words, an estimated 92.0 percent of small food store retailers would not be subject to the requirements of the rule.

Retailer costs under the rule are estimated at $952 million. Costs are estimated at $235,551 per retail firm and $26,149 per retail establishment. These estimated costs are lower than the PRIA upper range estimates. Retailers will face recordkeeping costs, costs associated with supplying country of origin information to consumers, and possibly additional handling costs. These cost increases may result in changes to retailer business practices. The rule does not specify the systems that affected retailers must put in place to implement mandatory COOL. Instead, retailers will be given flexibility to develop or modify their own systems to comply with the rule. There are many ways in which the rule's requirements may be met and firms will likely choose the least cost method in their particular situation to comply with the rule.

Wholesalers: Any establishment that supplies retailers with one or more of the covered commodities will be required by retailers to provide country of origin information so that retailers can accurately supply that information to consumers. Of wholesalers potentially affected by the rule, SBA defines those having less than 100 employees as small. Importers of covered commodities will also be affected by the rule and are categorized as wholesalers in the data.

The 2004 Statistics of U.S. Businesses (Ref. 12) provides information on wholesalers by employment size. For meat and meat products wholesalers there is a total of 2,509 firms. Of these, 2,401 firms have less than 100 employees. This indicates that approximately 96 percent of meat wholesalers are considered as small firms using the SBA definition.

There are 510 chicken wholesaler/distributor firms operating 564 facilities. Of these, there are 332 firms which have less than 100 employees, resulting in approximately 65 percent of the chicken wholesalers/distributors being classified as small businesses.

For fresh fruit and vegetable wholesalers there are a total of 4,654 firms. Of these, 4,418 firms have less than 100 employees, resulting in approximately 95 percent of the fresh fruit and vegetable wholesalers being classified as small businesses.

While information on ginseng wholesalers is not available, 46 dealers have been identified and they would all be considered as small businesses.

In addition to specialty wholesalers that primarily handle a single covered commodity, there are also general-line wholesalers that handle a wide range of products. It is assumed that these general-line wholesalers likely handle at least one and possibly all of the covered commodities. Therefore, the number of general-line wholesale businesses is included among entities affected by the rule.

The 2004 Statistics of U.S. Businesses provides information on general-line grocery wholesalers by employment size. There were 3,037 firms in total, and 2,858 firms had less than 100 employees. This results in approximately 94 percent of the general-line grocery wholesalers being classified as small businesses.

In general, over 94 percent of the wholesalers are classified as small businesses. This indicates that most of the wholesalers affected by mandatory COOL may be considered as small entities as defined by SBA.

It is estimated that intermediaries (importers and domestic wholesalers, handlers, and processors) will incur costs under the rule of approximately $1,115 million. Costs are estimated at $53,948 per intermediary firm and $50,598 per establishment.

Wholesalers will encounter increased costs in complying with mandatory COOL. Wholesalers will likely face increased recordkeeping costs, costs associated with supplying country of origin information to retailers, and possibly costs associated with segmenting products by country of origin, and additional handling costs. Some of the comments received on the proposed rule from wholesalers and retailers have indicated that retailers may choose to source covered commodities from a single supplier that procures the covered commodity from only one country in an attempt to minimize the costs associated with complying with mandatory COOL. These changes in business practices could lead to the further consolidation of firms in the wholesaling sector. The rule does not specify the systems that affected wholesalers must use to implement mandatory COOL. Instead, wholesalers will be given flexibility to modify or develop their own systems to comply with the rule. There are many ways in which the rule's requirements

may be met. In addition, wholesalers have the option of supplying covered commodities to retailers or other suppliers that are not covered by the rule.

Manufacturers: Any manufacturer that supplies retailers or wholesalers with a covered commodity will be required to provide country of origin information to retailers so that the information can be accurately supplied to consumers. Most manufacturers of covered commodities will likely print country of origin information on retail packages supplied to retailers. Of the manufacturers potentially affected by the rule, SBA defines those having less than 500 employees as small.

The 2004 Statistics of U.S. Businesses (Ref. 12) provides information on manufacturers by employment size. For livestock processing and slaughtering there is a total of 2,943 firms. Of these, 2,834 firms have less than 500 employees. This suggests that 96 percent of livestock processing and slaughtering operations would be considered as small firms using the SBA definition.

For chicken processing there are a total of 38 firms, only two of which are classified as small. Thus, only 5 percent of the chicken processors are small businesses.

For frozen fruit, juice, and vegetable manufacturers there is a total of 155 firms. There are 132 of these firms that are considered to be small. This suggests that 85 percent of the frozen fruit, juice, and vegetable manufacturers would be considered as small using the SBA definition.

There are a total of 161 roasted nuts and peanut butter manufacturers, which includes firms that do drying. Because only green and raw peanuts, macadamia nuts, and pecans will require retail country of origin labeling under this rule, it is estimated that no more than 5 percent of peanut, macadamia nut, and pecan manufacturing firms will be affected. Therefore, 8 peanut, macadamia nut, and pecan manufacturers are estimated to be affected, most if not all of which likely could be considered as small.

In general, approximately 95 percent of the manufacturers are classified as small businesses. This indicates that most of the manufacturers of covered commodities impacted by the rule would be considered as small entities as defined by SBA.

Manufacturers are included as intermediaries and additional costs for these firms are discussed in the previous section addressing wholesalers. Manufacturers of covered commodities will encounter increased costs in complying with mandatory COOL. Manufacturers like wholesalers will likely face increased recordkeeping costs, costs associated with supplying country of origin information to retailers, and possibly costs associated with segmenting products by country of origin and additional handling costs. Some of the comments received on the proposed rule from manufacturers have indicated that they may limit the number of sources from which they procure raw products. These changes in business practices could lead to the further consolidation of firms in the manufacturing sector. The rule does not specify the systems that affected manufacturers must use to implement mandatory COOL. Instead, manufacturers will be given flexibility to modify or develop their own systems to comply with the rule. There are many ways in which the rule's requirements may be met.

Producers: Producers of perishable agricultural commodities, peanuts, macadamia nuts, pecans, and ginseng are directly affected by mandatory COOL. Producers of cattle, hogs, sheep, and goats while not directly covered by this rule, will nevertheless be affected because covered meat commodities are produced from livestock. Whether directly or indirectly affected, these producers will more than likely be required by handlers and wholesalers to maintain country of origin information and transfer it to them so that they can readily transfer this information to retailers. Individuals who grow-out chickens for an integrator are not expected to be affected by this rule.

SBA defines a small agricultural producer as having annual receipts less than $750,000. The 2002 U.S. Census of Agriculture (Ref. 13) shows there are 1,018,359 farms that raise beef cows, and 2,458 are estimated to have annual receipts greater than $750,000. Thus, at least 99 percent of these beef cattle farms would be classified as small businesses according to the SBA definition. Similarly, an estimated 82 percent of hog farms would be considered as small and an estimated 99 percent of sheep, lamb, and goat farms would be considered as small.

Based on 2002 U.S. Census of Agriculture information, 92 percent of vegetable farms, 94 percent of fruit, nut, and berry farms, and 91 percent of peanut, macadamia nut, and pecan farms could be classified as small.

At the production level, agricultural producers will need to maintain records to establish country of origin for the products they sell. This information will need to be conveyed as the products move through the supply chains. In general, additional producer costs include the cost of modifying and maintaining a recordkeeping system for the country of origin information, animal or product identification, and labor and training. Based on our knowledge of the affected industries as well as comments received on the proposed rule and the voluntary guidelines, it is believed that producers already have much of the information available that could be used to substantiate country of origin claims. Cattle, hog, lamb, sheep, chicken, and goat producers may have a slightly larger burden for recordkeeping than fruit, vegetable, ginseng, peanut, macadamia nut, and pecan producers because animals can be born in one country and fed and slaughtered in another country. However, this rule provides flexibility in labeling meat covered commodities of multiple origins.

The costs for producers are expected to be relatively limited and should not have a larger impact on small producers than large producers. Producer costs are estimated at $450 million, or an estimated $376 per firm.

Economic impact on small entities: Information on sales or employment is not available for all firms or establishments shown in Table 1. However, it is reasonable to expect that this rule will have a substantial impact on a number of small businesses. At the wholesale and retail levels of the supply chain, the efficiency of these operations may be affected. For packers and processors handling products sourced from multiple countries, there may also be a desire to operate separate shifts for processing products from different origins, or to split processing within shifts. In either case, costs are likely to increase. Records will need to be maintained to ensure that accurate country of origin information is retained throughout the process and to permit compliance and enforcement reviews.

Even if only domestic origin products or products from a single country of origin are handled, there may be additional procurement costs to source supplies from a single country of origin. Additional procurement costs may include higher transportation costs due to longer shipping distances and higher acquisition costs due to supply and demand conditions for products from a particular country of origin, whether domestic or foreign.

These additional costs may result in consolidations within the processor, manufacturer, and wholesaler sectors for these covered commodities. Also, to comply with the rule, retailers may seek to limit the number of entities from

which they purchase covered commodities.

Additional alternatives considered: As previously mentioned, the COOL provisions of the Act leave little regulatory discretion in defining who is directly covered by this rule. The law explicitly identifies those retailers required to provide their customers with country of origin information for covered commodities (namely, retailers as defined by PACA).

The law also requires that any person supplying a covered commodity to a retailer provide information to the retailer indicating the country of origin of the covered commodity. Again, the law provides no discretion regarding this requirement for suppliers of covered commodities to provide information to retailers.

The rule has no mandatory requirement, however, for any firm other than statutorily defined retailers to make country of origin claims. In other words, no producer, processor, wholesaler, or other supplier is required to make and substantiate a country of origin claim provided that the commodity is not ultimately sold in the form of a covered commodity at the establishment of a retailer subject to the rule. Thus, for example, a processor and its suppliers may elect not to maintain country of origin information nor to make country of origin claims, but instead sell products through marketing channels not subject to the rule. Such marketing alternatives include foodservice, export, and retailers not subject to the rule. It is estimated that 47.0 percent of United States food sales occur through retailers subject to the rule, with the remaining 53.0 percent sold by retailers not subject to the rule or sold as food away from home. Additionally, food product sales into export markets provide marketing opportunities for producers and intermediaries that are not subject to the provisions of the rule. The majority of product sales are not subject to the rule, and there are many current examples of companies specializing in production of commodities for foodservice, export markets, and other channels of distribution that would not be directly affected by the rule.

The rule does not dictate systems that firms will need to put in place to implement the requirements. Thus, different segments of the affected industries will be able to modify or develop their own least-cost systems to implement COOL requirements. For example, one firm may depend primarily on manual identification and paper recordkeeping systems, while another may use automated identification and electronic recordkeeping systems.

The rule has no requirements for firms to report to USDA. Compliance audits will be conducted at firms' places of business. As stated previously, required records may be kept by firms in the manner most suitable to their operations and may be hardcopy documents, electronic records, or a combination of both. In addition, the rule provides flexibility regarding where records may be kept. If the product is pre-labeled with the necessary country of origin information, records documenting once-forward and once-back chain of custody information are sufficient as long as the source of the claim can be tracked and verified. Such flexibility should reduce costs for small entities to comply with the rule.

The rule requires that covered commodities at subject retailers be labeled with country of origin information, that suppliers of covered commodities provide such information to retailers, and that retailers and their suppliers maintain records and information sufficient to verify all country of origin claims. The rule provides flexibility regarding the manner in which the required information may be provided by retailers to consumers. The rule provides flexibility in the manner in which required country of origin information is provided by suppliers to retailers, and in the manner in which records and information are maintained to substantiate country of origin claims. Thus, the rule provides the maximum flexibility practicable to enable small entities to minimize the costs of the rule on their operations.

The recordkeeping burden associated with this rule was reduced based on public comments. USDA seeks comments on whether the regulatory impact analysis accurately reflects the potential population of impacted small entities and the extent to which the regulation economically impacts those entities.

Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3520), the information collection provisions associated with this interim final rule have been submitted to OMB for approval as a new collection. The Comments and Responses section lists the comments received on the preliminary PRA analysis contained in the October 30, 2003, proposed rule and provides the Agency's responses to the comments. A description of these provisions is given below with an estimate of the annual recordkeeping burden.

Title: Recordkeeping and Records Access Requirements for Producers and Food Facilities

OMB Number: 0581–new

Type of Request: New collection.

Expiration Date: Three years from the date of approval.

Abstract: The COOL provisions in the 2002 and 2008 Farm Bills require that specified retailers inform consumers as to the country of origin of covered commodities. Covered commodities included in this rulemaking are: Muscle cuts of beef (including veal), lamb, chicken, goat, and pork; ground beef, ground lamb, ground chicken, ground goat, and ground pork; perishable agricultural commodities; macadamia nuts; pecans; ginseng; and peanuts.

The key changes from the preliminary PRA analysis are reductions in the numbers of affected firms and establishments in the peanut sector and the addition of chicken, goat, ginseng, macadamia nuts, and pecans as covered commodities. These changes, and the use of more recent data for the other covered commodities, results in the number of establishments and firms decreasing from the preliminary PRA. In addition, as discussed in more detail below, the recordkeeping retention period has been reduced for both supplier and retailer records. Further, the 2008 Farm Bill specifically allows for the use of producer affidavits and prohibits the Secretary from requiring the maintenance of additional records not already maintained in the normal course of business.

While the Agency believes there will be savings to firms as a result of these changes, such savings are difficult to quantify. In addition, a number of affected firms commented that the initial paperwork burden estimates published in the proposed rule were too low. Therefore, the estimated labor hours per firm and per establishment remain unchanged in this PRA analysis. Comments are specifically invited on this issue.

Upon request by USDA representatives, suppliers and retailers subject to this subpart shall make available to USDA representatives, records maintained in the normal course of business that verify an origin claim. Such records shall be provided within 5 business days of the request and may be maintained in any location. Any person engaged in the business of supplying a covered commodity to a retailer (i.e., including but not limited to producers, distributors, handlers, packers, and processors), whether directly or indirectly, must make

country of origin information available to the retailer and must maintain records to establish and identify the immediate previous source and immediate subsequent recipient of a covered commodity for a period of one year from the date of the transaction. In addition, the supplier of a covered commodity that is responsible for initiating a country(ies) of origin claim, which in the case of beef, lamb, chicken, goat, and pork is the slaughter facility, must possess or have legal access to records that are necessary to substantiate that claim. In the case of beef, lamb, chicken, pork, and goat, a producer affidavit shall be considered acceptable evidence on which the slaughter facility may rely to initiate the origin claim, provided it is made by someone having first-hand knowledge of the origin of the animal(s) and identifies the animal(s) unique to the transaction.

For an imported covered commodity, the importer of record must ensure that records provide clear product tracking from the port of entry into the United States to the immediate subsequent recipient. In addition, the records must accurately reflect the country of origin in relevant CBP entry documents and information systems and must be maintained for a period of 1 year from the date of the transaction.

As previously mentioned, upon request by USDA representatives, suppliers and retailers subject to this subpart shall make available to USDA representatives, records maintained in the normal course of business that verify an origin claim. Such records shall be provided within 5 business days of the request and may be maintained in any location. In addition, records that identify the covered commodity, the retail supplier, and for products that are not pre-labeled the country of origin information must be maintained for a period of one year from the date the origin declaration is made at retail. Such records may be located at the retailer's point of distribution, or at a warehouse, central office or other off-site location.

Description of Recordkeepers: Individuals who supply covered commodities, whether directly to retailers or indirectly through other participants in the marketing chain, are required to establish and maintain country of origin information for the covered commodities and supply this information to retailers. As a result, producers, handlers, manufacturers, wholesalers, importers, and retailers of covered commodities will be affected by this rule.

Burden: Approximately 1,255,591 establishments owned by approximately 1,221,740 firms are estimated to be either directly or indirectly affected by this rule. As previously discussed in previous sections of this document, several changes have been made in this interim final rule compared to the October 30, 2003, proposed rule. These changes are a result of changes made by the Agency in an effort to reduce the burden on regulated entities as well as changes made by the 2008 Farm Bill.

In general, the supply chain for each of the covered commodities includes agricultural producers, processors, wholesalers, importers, and retailers. Imported products may be introduced at any level of the supply chain. Other intermediaries, such as auction markets, may be involved in transferring products from one stage of production to the next. The rule's paperwork burden will be incurred by the number and types of firms and establishments listed in Table 9, which follows.

TABLE 9—COSTS ASSOCIATED WITH PAPERWORK BURDEN

Type	Firms	Initial costs	Establishments	Maintenance costs	Total costs
Producers:					
Cattle & Calves	971,400	75,699,259	971,400	145,651,716	221,350,975
Sheep & Lambs	69,090	5,384,046	69,090	10,359,355	15,743,400
Hogs & Pigs	65,540	5,107,401	65,540	9,827,068	14,934,469
Goats	9,146	715,745	9,146	1,371,381	2,084,126
Chicken Producer and Processor	38	2,961	168	25,190	28,151
Fruits & Vegetables	79,800	6,218,654	79,800	3,788,984	10,007,638
Ginseng	190	14,806	190	9,021	23,828
Peanuts	650	50,653	650	30,863	81,516
Pecans	1,119	87,192	1,119	53,130	140,323
Macadamia	53	4,130	53	2,516	6,647
Handlers, Processors, & Wholesalers:					
Stockyards, Dealers & Market Agencies	6,807	8,910,363	6,807	6,589,040	15,499,403
Livestock Processing & Slaughtering	2,943	3,852,387	3,207	62,086,237	65,938,624
Meat & Meat Product Wholesale	2,509	3,284,281	2,706	2,619,354	5,903,635
Chicken Processor and Wholesaler	510	667,590	564	545,941	1,213,531
Frozen Fruit, Juice & Vegetable Mfg	155	202,895	247	239,091	441,986
Fresh Fruit & Vegetable Wholesale	4,654	6,092,086	5,016	4,855,388	10,947,474
Ginseng Dealers	46	60,214	46	44,527	104,741
Roasted Nuts & Peanut Butter Mfg	8	10,472	9	8,712	19,184
Peanut, Pecans, & Macadamia Nut Wholesalers	5	6,545	5	4,840	11,385
General Line Grocery Wholesalers	3,037	3,975,433	3,436	3,325,979	7,301,412
Retailers	4,040	5,288,360	36,392	247,264,534	252,552,894
Totals:					
Producers	1,197,026	93,281,849	1,197,156	171,119,224	264,401,073
Handlers, Processors, & Wholesalers	20,674	27,062,266	22,043	80,319,108	107,381,374
Retailers	4,040	5,288,360	36,392	247,264,534	252,552,894
Grand Total	1,221,740	125,632,475	1,255,591	498,702,866	624,335,341

The affected firms and establishments will broadly incur two types of costs. First, firms will incur initial or start-up costs to comply with the rule. Initial costs will be borne by each firm, even though a single firm may operate more than one establishment. Second, enterprises will incur additional recordkeeping costs associated with

storing and maintaining records on an ongoing basis. These activities will take place in each establishment operated by each affected business.

Compared to the proposed rule, this rule reduces the length of time that records must be kept and revises the recordkeeping requirements for pre-labeled products. Any person engaged in the business of supplying a covered commodity to a retailer, whether directly or indirectly, must maintain records to establish and identify the immediate previous source and immediate subsequent recipient of a covered commodity for a period of 1 year from the date of the transaction. Under the proposed rule, records would have been required to be kept for 2 years.

Upon request by USDA representatives, suppliers and retailers subject to this subpart shall make available to USDA representatives, records maintained in the normal course of business that verify an origin claim. Such records shall be provided within 5 business days of the request and may be maintained in any location. Under the proposed rule, retailers would have to have maintained these records at the retail store for 7 days following the sale of the product.

For pre-labeled products, the rule provides that the label itself is sufficient evidence on which the retailer may rely to establish a product's origin. The proposed rule did not provided for this method of substantiation. The rule now requires that records identify the covered commodity, the supplier and for products that are not pre-labeled, the country of origin information. This information must be maintained for a period of 1 year from the date the origin and production designations are made at retail. Under the proposed rule, these records would have been required to be maintained for 2 years.

With respect to initial recordkeeping costs, it is believed that most producers currently maintain normal business that would contain the information needed to substantiate country of origin claims. However, producers do not typically pass along country of origin information to subsequent purchasers. Therefore, producers likely will incur some additional incremental costs to record, maintain, and transfer country of origin information to substantiate required claims made at retail. Because much of the necessary recordkeeping has already been developed during typical farm and ranch operations, it is estimated that the incremental costs for producers to supplement existing records with country of origin information will be relatively small per firm. Examples of initial or start-up costs would be any additional recordkeeping burden needed to record the required country of origin information and transfer this information to handlers, processors, wholesalers, or retailers via records used in the normal course of business.

Producers will need an estimated 4 hours to modify an established system for organizing records to carry out the purposes of this regulation. This additional time would be required to modify existing recordkeeping systems to incorporate any added information needed to substantiate country of origin claims. Although not all farm products ultimately will be sold at retail establishments covered by this rule, it is assumed that virtually all producers will wish to keep their marketing options as flexible as possible. Thus, all producers of covered commodities or livestock (in the case of the covered meat commodities) will modify recordkeeping systems sufficient to substantiate country of origin claims. It is also recognized that some operations will require substantially more than 4 hours modifying their recordkeeping systems. In particular, it is believed that livestock backgrounders, stockers, and feeders will face a greater burden in modifying recordkeeping systems. These types of operations will need to track country of origin information for animals brought into the operation as well as for animals sold from the operation via records used in the normal course of business, increasing the burden of substantiating country of origin claims. Conversely, operations such as fruit and vegetable farms that produce only United States products likely will require little if any change to their existing recordkeeping systems in order to substantiate country of origin claims. Overall, it is believed that 4 hours represents a reasonable estimate of the average additional time that will be required per year across all types of producers.

In estimating initial recordkeeping costs, 2001 wage rates and benefits published by the Bureau of Labor Statistics from the National Compensation Survey were used. Subsequently, the National Compensation Survey has been updated and 2006 wage rates and benefits are now available. These updated wage rates and benefits are used in estimating the recordkeeping costs and results in an increase in the estimated costs.

For producers, it is assumed that the added work needed to initially adapt an existing recordkeeping system for country of origin information is primarily a bookkeeping task. This task may be performed by independent bookkeepers, or in the case of operations that perform their own bookkeeping, an individual with equivalent skills. The Bureau of Labor Statistics (BLS) publishes wage rates for bookkeepers, accounting, and auditing clerks (Ref. 15). It is assumed that this wage rate represents the cost for producers to hire an independent bookkeeper. In the case of producers who currently perform their own bookkeeping, it is assumed that this wage rate represents the opportunity cost of the producers' time for performing these tasks. The May 2006 wage rate, the most recent data available, is estimated at $15.28 per hour. For this analysis, an additional 27.5 percent is added to the wage rate to account for total benefits which includes social security, unemployment insurance, workers compensation, etc. The estimate of this additional cost to employers is published by the BLS (Ref. 15). At 4 hours per firm and a cost of $19.48 per hour, initial recordkeeping costs to producers are estimated at approximately $93.3 million to modify existing recordkeeping systems in order to substantiate country of origin claims.

The recordkeeping burden on handlers, processors, wholesalers, and retailers is expected to be more complex than the burden most producers face. These operations will need to maintain country of origin information on the covered commodities purchased and subsequently furnish that information to the next participant in the supply chain. This will require adding additional information to a firm's bills of lading, invoices, or other records associated with movement of covered commodities from purchase to sale. Similar to producers, however, it is believed that most of these operations already maintain the types of necessary records in their existing systems. Thus, it is assumed that country of origin information will require only modification of existing recordkeeping systems rather than development of new systems.

The Label Cost Model Developed for FDA by RTI International (Ref. 16; Ref. 17) is used to estimate the cost of including additional country of origin information to an operation's records. It is assumed that a limited information, one-color redesign of a paper document will be sufficient to comply with the rule's recordkeeping requirements. The number of hours required to complete the redesign is estimated to be 29 with an estimated cost at $1,309 per firm. While the cost will be much higher for some firms and lower for others, it is believed that $1,309 represents a reasonable estimate of average cost for all firms. Based on this, it is estimated

that the initial recordkeeping costs to intermediaries such as handlers, processors, and wholesalers (importers are included with wholesalers) will be approximately $27 million, and initial recordkeeping costs at retail will be approximately $5 million. The recordkeeping cost to producers increases due to the increase in the number of firms from the additional covered commodities; goat, chicken, macadamia nuts, pecans, and ginseng. The recordkeeping cost to intermediaries and retailers declines slightly from the initial recordkeeping cost estimate in the proposed rule due to the reduction in the number intermediaries and retailers from continuing consolidation in those sectors.

The total initial recordkeeping costs for all firms are thus estimated at approximately $125 million. This increase in the recordkeeping cost as compared to the initial recordkeeping costs in the proposed rule is due to the higher estimated wage rates and benefits.

In addition to these one-time costs to modify recordkeeping systems, enterprises will incur additional recordkeeping costs associated with storing and maintaining records. These costs are referred to as maintenance costs in Table 9. Again, the marginal cost for producers to maintain and store any additional information needed to substantiate country of origin claims is expected to be relatively small.

For fruit, vegetable, ginseng, peanut, macadamia nut, and pecan producers, country of origin generally is established at the time that the product is harvested, and thus there is no need to track country of origin information throughout the production lifecycle of the product. Likewise, this is also the case for chicken as the vast majority of chicken products sold by covered retailers are from chickens that are produced in a controlled environment in the United States. This group of producers is estimated to require an additional 4 hours a year, or 1 hour per quarter, to maintain country of origin information.

Compared to chicken, fruit, vegetable, ginseng, peanut, macadamia nut, and pecan producers, it is expected that livestock producers will incur higher costs to maintain country of origin information. Chicken, fruits, vegetables, ginseng, peanuts, and macadamia nuts are generally harvested once and then shipped by the producer to the first handler. In contrast, livestock can and often do move through several geographically dispersed operations prior to sale for processing or slaughter.

Cattle, for example, typically change ownership between 2 to 3 times before they are slaughtered and processed. Livestock may be acquired from other countries by United States producers, which may complicate the task of tracking country of origin information. Because animals are frequently sorted and regrouped at various stages of production and may change ownership several times prior to slaughter, country of origin information will need to be maintained on animals as they move through their lifecycle. Thus, it is expected that the recordkeeping burden for livestock producers will be higher than it will be for producers of other covered commodities. It is estimated that these producers will require an additional 12 hours a year, or 1 hour per month, to maintain country of origin records. Again, this is an average for all enterprises.

It is assumed that farm labor will primarily be responsible for maintaining country of origin information at producers' enterprises. NASS data (Ref. 18) are used to estimate average farm wage rates—$9.80 per hour for livestock workers and $9.31 per hour for other crops workers. Applying the rate of 27.5 percent to account for benefits results in an hourly rate of $12.50 for livestock workers and $11.87 for other crops workers. Assuming 12 hours of labor per year for livestock operations and 4 hours per year for all other operations, the estimated total annual maintenance costs to producers is $171 million, which is higher than the initial maintenance costs in the proposed rule. The increase in the estimated maintenance cost is due to the higher estimated wage rates and benefits and the increase in the number of producers due to the inclusion of chickens, goats, ginseng, macadamia nuts, and pecans as covered commodities.

It is expected that intermediaries such as handlers, processors, and wholesalers will face higher costs per enterprise to maintain country of origin information compared to costs faced by producers. Much of the added cost is attributed to the larger average size of these enterprises compared to the average producer enterprise. In addition, these intermediaries will need to track products both coming into and going out of their businesses.

With the exception of livestock processing and slaughtering establishments, the maintenance burden hours for country of origin recordkeeping is estimated to be 52 hours per year per establishment. For this part of the supply chain, the recordkeeping activities are on-going and are estimated to require an additional hour a week. It is expected, however, that livestock processing and slaughtering enterprises will experience a more intensive recordkeeping burden. These enterprises disassemble carcasses into many individual cuts, which must maintain their country of origin identity. In addition, businesses that produce ground beef, lamb, goat and pork may commingle product from multiple origins, which will require some monitoring and recordkeeping to ensure accurate labeling and to substantiate the country of origin information provided to retailers. Maintenance of the recordkeeping system at these establishments is estimated to total 1,040 hours per establishment, or 20 hours per week.

Maintenance activities will include inputting, tracking, and storing country of origin information for each covered commodity. Since this is mostly an administrative task, the cost is estimated by using the May 2006 BLS wage rate from the National Compensation Survey for Administrative Support Occupations ($14.60 per hour with an additional 27.5 percent added to cover overhead costs for a total of $18.62 per hour). This occupation category includes stock and inventory clerks and record clerks. Coupled with the assumed hours per establishment, the resulting total annual maintenance costs to handlers, processors, and wholesalers and other intermediaries are estimated at approximately $80 million.

Retailers will need to supply country of origin information for each covered commodity sold at each store. Therefore, additional recordkeeping maintenance costs are believed to affect each establishment. Because tracking of the covered commodities will be done daily, it is believed that an additional hour of recordkeeping activities for country of origin information will be incurred daily at each retail establishment. These additional activities result in an estimated 365 additional hours per year per establishment. Using the BLS wage rate for administrative support occupations ($14.60 per hour with an additional 27.5 percent added to cover overhead costs for a total of $18.62 per hour) results in total estimated annual maintenance costs to retailers of $247 million. This estimated cost is higher than the initial maintenance cost for retailers in the proposed rule due to the higher wage rate and benefits from the updated BLS information.

The total maintenance recordkeeping costs for all enterprises are thus estimated at approximately $499 million. The increase in the total maintenance cost over the initial

maintenance cost estimate in the proposed rule is due to the higher wage rates and benefits which were updated with more recent information and the addition of more covered commodities.

The total first-year recordkeeping burden is calculated by summing the initial and maintenance costs. The total recordkeeping costs are estimated for producers at approximately $264 million; for handlers, processors, and wholesalers at approximately $107 million; and for retailers at approximately $253 million. The total recordkeeping cost for all participants in the supply chain for covered commodities is estimated at $624 million for the first year, with subsequent maintenance costs of $499 million per year.

Annual Reporting and Recordkeeping Burden for the First Year (Initial): Public reporting burden for this initial recordkeeping set up is estimated to average 4.5 hours per year per individual recordkeeper.

Estimated Number of Firms Recordkeepers: 1,221,740.

Estimated Total Annual Burden: 5,504,811 hours.

Annual Reporting and Recordkeeping Burden (Maintenance): Public reporting burden for this recordkeeping storage and maintenance is estimated to average 24.9 hours per year per individual recordkeeper.

Estimated Number of Establishments Recordkeepers: 1,255,591.

Estimated Total Annual Burden: 31,909,210 hours.

AMS is committed to implementation of the Government Paperwork Elimination Act (GPEA) to provide the public with the option to submit or transact business electronically to the extent practicable. This new information collection has no forms and is only for recordkeeping purposes. Therefore, the provisions of an electronic submission alternative are not required by GPEA.

AMS is soliciting comments from all interested parties concerning these recordkeeping requirements. Comments are specifically invited on: (1) Whether the recordkeeping is necessary for the proper operation of this program, including whether the information would have practical utility; (2) the accuracy of USDA's estimate of the burden of the recordkeeping requirements, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the records to be maintained; and (4) ways to minimize the burden of the recordkeeping on those who are to maintain and/or make the records available, including the use of appropriate automated, electronic, mechanical, or other technological recordkeeping techniques or other forms of information technology. Comments concerning the recordkeeping requirements contained in this interim final rule should be submitted through the Internet at *http://www.regulations.gov.* Written comments should be sent to Country of Origin Labeling Program, Room 2607–S; Agricultural Marketing Service (AMS), USDA; STOP 0254; 1400 Independence Avenue, SW.; Washington, DC 20250–0254, or by facsimile to 202/354–4693.

Comments sent to the above location should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 725, Washington, DC 20503. All responses to this action will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

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Executive Order 12988

The contents of this rule were reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. States and local jurisdictions are preempted from creating or operating country of origin labeling programs for the commodities specified in the Act and these regulations. With regard to other Federal statutes, all labeling claims made in conjunction with this regulation must be consistent with other applicable Federal requirements. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Civil Rights Review

AMS considered the potential civil rights implications of this rule on minorities, women, or persons with disabilities to ensure that no person or group shall be discriminated against on the basis of race, color, national origin, gender, religion, age, disability, sexual orientation, marital or family status, political beliefs, parental status, or protected genetic information. This review included persons that are employees of the entities that are subject to these regulations. This interim final rule does not require affected entities to relocate or alter their operations in ways that could adversely affect such persons or groups. Further, this rule will not deny any persons or groups the benefits of the program or subject any persons or groups to discrimination.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, Federalism. This Order directs agencies to construe, in regulations and otherwise, a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence to conclude that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute. This rule is required by the 2002 Farm Bill, as amended by the 2008 Farm Bill.

While this statute does not contain an express preemption provision, it is clear from the language in the statute that Congress intended preemption of State law. The law assigns enforcement responsibilities to the Secretary and encourages the Secretary to enter into partnerships with States with enforcement infrastructure to assist in the administration of the program. The law provides for a 30-day period in which retailers and suppliers may take the necessary corrective action after receiving notice of a nonconformance. The Secretary can impose a civil penalty only if the retailer or supplier has not made a good faith effort to comply and only after the Secretary provides notice and an opportunity for a hearing. Allowing private rights of actions would frustrate the purpose of this comprehensive enforcement system in which Congress struck a delicate balance of imposing a requirement, but ensuring that the agency had wide latitude in enforcement discretion. Thus, it is clear that State laws and other actions were intended to be preempted.

Several States have implemented mandatory programs for country of origin labeling of certain commodities. For example, Alabama, Arkansas, Mississippi, and Louisiana have origin labeling requirements for certain seafood products. Other States including Wyoming, Idaho, North Dakota, South Dakota, Louisiana, Kansas, and Mississippi have origin labeling requirements for certain meat products. In addition, the State of Florida and the State of Maine have origin labeling requirements for fresh produce items.

To the extent that these State country of origin labeling programs encompass commodities that are not governed by this regulation, the States may continue to operate them. For those State country of origin labeling programs that encompass commodities that are governed by this regulation, these programs are preempted. In most cases, the requirements contained within this rule are more stringent and prescriptive than the requirements of the State programs. With regard to consultation with States, as directed by the law, AMS has consulted with the States that have country of origin labeling programs. Further, States were expressly invited to comment on the proposed regulation as it related to existing State programs. No States submitted any comments pertaining to this issue.

This interim final rule contains those provisions of the October 30, 2003 (68 FR 61944), proposed rule that pertain to muscle cuts of beef, lamb and pork; ground beef, ground lamb, ground pork; perishable agricultural commodities; and peanut covered commodities as well as the additional commodities that were added by the 2008 Farm Bill: Chicken, macadamia nuts, pecans, ginseng, and goat meat. Modifications to these provisions have been made as discussed herein.

This interim final rule is made effective on September 30, 2008. The requirements of this rule do not apply to covered commodities produced or packaged before September 30, 2008. This will allow existing product to clear through the channels of commerce and permit AMS to conduct an industry education and outreach program concerning the provisions contained within this rulemaking.

Further, pursuant to 5 U.S.C. 553, it is found and determined upon good cause that it is impractical, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect. This action is authorized under the Agricultural Marketing Act of 1946, as amended. This interim final rule reflects changes made as a result of comments received in response to the 2003 proposed rule and the 2004 interim final rule on fish and shellfish, as well as the changes made by the 2008 Farm Bill. After issuance of this interim final rule, the Department will provide all affected persons, including the newly affected industries—goat, chicken, macadamia nuts, pecans, and ginseng—the opportunity to provide additional comments prior to issuing a final rule. In addition, this action is needed to meet the statutory implementation date. Further, this rule provides for a 60-day comment period.

List of Subjects in 7 CFR Part 65

Agricultural commodities, Food labeling, Meat and meat products, Macadamia nuts, Peanuts, Pecans, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR chapter I is amended by adding part 65 to read as follows:

PART 65—COUNTRY OF ORIGIN LABELING OF BEEF, PORK, LAMB, CHICKEN, GOAT MEAT, PERISHABLE AGRICULTURAL COMMODITIES, MACADAMIA NUTS, and PEANUTS

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Subpart B—[Reserved]

Authority: 7 U.S.C. 1621 *et seq.*

Subpart A—General Provisions

Definitions

§ 65.100 Act.

Act means the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*).

§ 65.105 AMS.

AMS means the Agricultural Marketing Service, United States Department of Agriculture.

§ 65.110 Beef.

Beef means meat produced from cattle, including veal.

§ 65.115 Born.

Born in the case of chicken means hatched from the egg.

§ 65.120 Chicken.

Chicken has the meaning given the term in 9 CFR 381.170(a)(1).

§ 65.125 Commingled covered commodities.

Commingled covered commodities means covered commodities (of the same type) presented for retail sale in a consumer package that have been prepared from raw material sources having different origins (e.g., bag of frozen strawberries).

§ 65.130 Consumer package.

Consumer package means any container or wrapping in which a covered commodity is enclosed for the delivery and/or display of such commodity to retail purchasers.

§ 65.135 Covered commodity.

(a) *Covered commodity* means:

(1) Muscle cuts of beef, lamb, chicken, goat, and pork;

(2) Ground beef, ground lamb, ground chicken, ground goat, and ground pork;

(3) Perishable agricultural commodities;

(4) Peanuts;

(5) Macadamia nuts;

(6) Pecans; and

(7) Ginseng.

(b) Covered commodities are excluded from this part if the commodity is an ingredient in a processed food item as defined in § 65.220.

§ 65.140 Food service establishment.

Food service establishment means a restaurant, cafeteria, lunch room, food stand, saloon, tavern, bar, lounge, or other similar facility operated as an enterprise engaged in the business of selling food to the public. Similar food service facilities include salad bars, delicatessens, and other food enterprises located within retail establishments that provide ready-to-eat foods that are consumed either on or outside of the retailer's premises.

§ 65.145 Ginseng.

Ginseng means ginseng root of the genus Panax.

§ 65.150 Goat.

Goat means meat produced from goats.

§ 65.155 Ground beef.

Ground beef has the meaning given that term in 9 CFR 319.15(a), i.e., chopped fresh and/or frozen beef with or without seasoning and without the addition of beef fat as such, and containing no more than 30 percent fat, and containing no added water, phosphates, binders, or extenders, and also includes products defined by the terms ''hamburger'' in 9 CFR 319.15(b) and ''beef patties'' in 9 CFR 319.15(c).

§ 65.160 Ground chicken.

Ground chicken means comminuted chicken of skeletal origin that is produced in conformance with all applicable Food Safety and Inspection Service labeling guidelines.

§ 65.165 Ground goat.

Ground goat means comminuted goat of skeletal origin that is produced in conformance with all applicable Food Safety and Inspection Service labeling guidelines.

§ 65.170 Ground lamb.

Ground lamb means comminuted lamb of skeletal origin that is produced in conformance with all applicable Food Safety and Inspection Service labeling guidelines.

§ 65.175 Ground pork.

Ground pork means comminuted pork of skeletal origin that is produced in conformance with all applicable Food Safety and Inspection Service labeling guidelines.

§ 65.180 Imported for immediate slaughter.

Imported for immediate slaughter means imported into the United States for ''immediate slaughter'' as that term is defined in 9 CFR 93.400, i.e., consignment directly from the port of entry to a recognized slaughtering establishment and slaughtered within 2 weeks from the date of entry.

§ 65.185 Ingredient.

Ingredient means a component either in part or in full, of a finished retail food product.

§ 65.190 Lamb.

Lamb means meat, other than mutton (or yearling mutton), produced from sheep.

§ 65.195 Legible.

Legible means text that can be easily read.

§ 65.200 NAIS-compliant system.

NAIS-compliant system means Animal and Plant Health Inspection Service (APHIS)/Veterinary Services (VS) official animal identification numbers, tags, devices, or protocols, and location identifiers that are consistent with any APHIS/VS official disease program or activity, and animal tracking databases that have been reviewed and approved by APHIS/VS Chief Information Officer for utilizing NAIS standards regarding animal movement information.

§ 65.205 Perishable agricultural commodity.

Perishable agricultural commodity means fresh and frozen fruits and vegetables of every kind and character that have not been manufactured into articles of a different kind or character and includes cherries in brine as defined by the Secretary in accordance with trade usages.

§ 65.210 Person.

Person means any individual, partnership, corporation, association, or other legal entity.

§ 65.215 Pork.

Pork means meat produced from hogs.

§ 65.220 Processed food item.

Processed food item means a retail item derived from a covered commodity that has undergone specific processing resulting in a change in the character of the covered commodity, or that has been combined with at least one other covered commodity or other substantive food component (e.g., chocolate, breading, tomato sauce), except that the addition of a component (such as water, salt, or sugar) that enhances or represents a further step in the preparation of the product for consumption, would not in itself result in a processed food item. Specific processing that results in a change in the character of the covered commodity includes cooking (e.g., frying, broiling, grilling, boiling, steaming, baking, roasting), curing (e.g., salt curing, sugar curing, drying), smoking (hot or cold), and restructuring (e.g., emulsifying and extruding). Examples of items excluded include teriyaki flavored pork loin, roasted peanuts, breaded chicken tenders, and fruit medley.

§ 65.225 Produced.

Produced in the case of a perishable agricultural commodity, peanuts, ginseng, pecans, and macadamia nuts means grown.

§ 65.230 Production step.

Production step means, in the case of beef, pork, goat, chicken, and lamb, born, raised, or slaughtered.

§ 65.235 Raised.

Raised means, in the case of beef, pork, chicken, goat, and lamb, the period of time from birth until slaughter or in the case of animals imported for immediate slaughter as defined in § 65.180, the period of time from birth

until date of entry into the United States.

§ 65.240 Retailer.

Retailer means any person licensed as a retailer under the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(b)).

§ 65.245 Secretary.

Secretary means the Secretary of Agriculture of the United States or any person to whom the Secretary's authority has been delegated.

§ 65.250 Slaughter.

Slaughter means the point in which a livestock animal (including chicken) is prepared into meat products (covered commodities) for human consumption. For purposes of labeling under this part, the word harvested may be used in lieu of slaughtered.

§ 65.255 United States.

United States means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, American Samoa, Guam, the Northern Mariana Islands, and any other Commonwealth, territory, or possession of the United States.

§ 65.260 United States country of origin.

United States country of origin means in the case of:

(a) Beef, pork, lamb, chicken, and goat:

(1) From animals exclusively born, raised, and slaughtered in the United States;

(2) From animals born and raised in Alaska or Hawaii and transported for a period of not more than 60 days through Canada to the United States and slaughtered in the United States; or

(3) From animals present in the United States on or before July 15, 2008, and once present in the United States, remained continuously in the United States.

(b) Perishable agricultural commodities, peanuts, ginseng, pecans, and macadamia nuts: From products produced in the United States.

§ 65.265 USDA.

USDA means the United States Department of Agriculture.

Country of Origin Notification

§ 65.300 Country of origin notification.

In providing notice of the country of origin as required by the Act, the following requirements shall be followed by retailers:

(a) *General.* Labeling of covered commodities offered for sale whether individually, in a bulk bin, carton, crate, barrel, cluster, or consumer package must contain country of origin as set forth in this regulation.

(b) *Exemptions.* Food service establishments as defined in § 65.135 are exempt from labeling under this subpart.

(c) *Exclusions.* A covered commodity is excluded from this subpart if it is an ingredient in a processed food item as defined in § 65.220.

(d) *Labeling covered commodities of United States origin.*

(1) A covered commodity may bear a declaration that identifies the United States as the sole country of origin at retail only if it meets the definition of United States country of origin as defined in § 65.260.

(2) Covered commodities further processed or handled in a foreign country after meeting the requirements to be labeled as United States origin as defined in § 65.260 (e.g., born, raised, and slaughtered or produced) may bear a declaration that identifies the United States as the sole country of origin at retail provided the identity of the product is maintained along with records to substantiate the origin claims and the claim is consistent with other applicable Federal legal requirements.

(e) *Labeling muscle cut covered commodities of multiple countries of origin that include the United States.*

(1)(i) If an animal was born, raised, and/or slaughtered in the United States and was not imported for immediate slaughter as defined in § 65.180, the origin of the resulting meat products derived from that animal may be designated as Product of the United States, Country X, and/or (as applicable) Country Y where Country X and Country Y represent the actual or possible countries of foreign origin.

(ii) If an animal was imported into the United States for immediate slaughter as defined in § 65.180, the origin of the resulting meat products derived from that animal shall be designated as Product of Country X and the United States.

(2) In both cases of paragraph (e)(1)(i) and (e)(1)(ii) of this section, the origin declaration may include more specific information related to production steps provided records to substantiate the claims are maintained and the claim is consistent with other applicable Federal legal requirements.

(f) *Labeling imported covered commodities.* Imported covered commodities for which origin has already been established as defined by this law (e.g., born, raised, slaughtered or grown) and for which no production steps have occurred in the United States, shall retain their origin, as declared to U.S. Customs and Border Protection (CBP) at the time the product entered the United States, through retail sale.

(g) *Labeling commingled covered commodities.* In the case of perishable agricultural commodities; peanuts; pecans; ginseng; and macadamia nuts: For imported covered commodities that have not subsequently been substantially transformed in the United States that are commingled with covered commodities sourced from a different origin that have not been substantially transformed (as established by CBP) in the United States, and/or covered commodities of United States origin, the declaration shall indicate the countries of origin in accordance with existing Federal legal requirements.

(h) *Labeling ground beef, ground pork, ground lamb, ground goat, and ground chicken.* The declaration for ground beef, ground pork, ground lamb, ground goat, and ground chicken covered commodities shall list all countries of origin contained therein or that may be reasonably contained therein. In determining what is considered reasonable, when a raw material from a specific origin is not in a processor's inventory for more than 60 days, that country shall no longer be included as a possible country of origin.

(i) *Remotely purchased products.* For sales of a covered commodity in which the customer purchases a covered commodity prior to having an opportunity to observe the final package (e.g., Internet sales, home delivery sales, etc.), the retailer may provide the country of origin notification either on the sales vehicle or at the time the product is delivered to the consumer.

§ 65.400 Markings.

(a) Country of origin declarations can either be in the form of a placard, sign, label, sticker, band, twist tie, pin tag, or other format that allows consumers to identify the country of origin. The declaration of the country of origin of a product may be in the form of a statement such as ''Product of USA,'' ''Produce of the USA,'' or ''Grown in Mexico,'' may only contain the name of the country such as ''USA'' or ''Mexico,'' or may be in the form of a check box provided it is in conformance with other Federal labeling laws.

(b) The declaration of the country of origin (e.g., placard, sign, label, sticker, band, twist tie, pin tag, or other display) must be legible and placed in a conspicuous location, so as to render it likely to be read and understood by a customer under normal conditions of purchase.

(c) The declaration of country of origin may be typed, printed, or handwritten provided it is in conformance with other Federal labeling laws and does not obscure other labeling information required by other Federal regulations.

(d) A bulk container (e.g., display case, shipper, bin, carton, and barrel), used at the retail level to present product to consumers, may contain a covered commodity from more than one country of origin provided all possible origins are listed.

(e) In general, abbreviations are not acceptable. Only those abbreviations approved for use under CBP rules, regulations, and policies, such as ''U.K.'' for ''The United Kingdom of Great Britain and Northern Ireland'', ''Luxemb'' for Luxembourg, and ''U.S.'' for the ''United States'' are acceptable. The adjectival form of the name of a country may be used as proper notification of the country of origin of imported commodities provided the adjectival form of the name does not appear with other words so as to refer to a kind or species of product. Symbols or flags alone may not be used to denote country of origin.

(f) With the exception of perishable agricultural commodities, peanuts, pecans, and ginseng, State or regional label designations are not acceptable in lieu of country of origin labeling.

Recordkeeping

§ 65.500 Recordkeeping requirements.

(a) General.

(1) All records must be legible and may be maintained in either electronic or hard copy formats. Due to the variation in inventory and accounting documentary systems, various forms of documentation and records will be acceptable.

(2) Upon request by USDA representatives, suppliers and retailers subject to this subpart shall make available to USDA representatives, records maintained in the normal course of business that verify an origin claim. Such records shall be provided within 5 business days of the request and may be maintained in any location.

(b) Responsibilities of Suppliers.

(1) Any person engaged in the business of supplying a covered commodity to a retailer, whether directly or indirectly, must make available information to the buyer about the country(ies) of origin of the covered commodity. This information may be provided either on the product itself, on the master shipping container, or in a document that accompanies the product through retail sale. In addition, the supplier of a covered commodity that is responsible for initiating a country(ies) of origin claim, which in the case of beef, lamb, chicken, goat, and pork is the slaughter facility, must possess or have legal access to records that are necessary to substantiate that claim. For that purpose, in the case of beef, lamb, chicken, goat, and pork, a producer affidavit shall be considered acceptable evidence on which the slaughter facility may rely to initiate the origin claim, provided it is made by someone having first-hand knowledge of the origin of the animal(s) and identifies the animal(s) unique to the transaction. Packers that slaughter animals that are part of a NAIS compliant system or other recognized official identification system (e.g., Canadian official system, Mexico official system) may also rely on the presence of an official ear tag and/or the presence of any accompanying animal markings (i.e., ''Can'', ''M''), as applicable, on which to base their origin claims. This provision also applies to such animals officially identified as a group lot.

(2) Any person engaged in the business of supplying a covered commodity to a retailer, whether directly or indirectly (i.e., including but not limited to growers, distributors, handlers, packers, and processors), must maintain records to establish and identify the immediate previous source (if applicable) and immediate subsequent recipient of a covered commodity for a period of 1 year from the date of the transaction.

(3) For an imported covered commodity (as defined in § 65.300(f)), the importer of record as determined by CBP, must ensure that records: Provide clear product tracking from the port of entry into the United States to the immediate subsequent recipient and accurately reflect the country of origin of the item as identified in relevant CBP entry documents and information systems; and must maintain such records for a period of 1 year from the date of the transaction.

(c) Responsibilities of Retailers.

(1) Records and other documentary evidence relied upon at the point of sale to establish a covered commodity's country(ies) of origin must be provided to any duly authorized representative of USDA in accordance with § 65.500(a)(2), and maintained for a period of 1 year from the date the origin declaration is made at retail. For pre-labeled products, the label itself is sufficient evidence on which the retailer may rely to establish the product's origin.

(2) Records that identify the covered commodity, the retail supplier, and for products that are not pre-labeled, the country of origin information, must be maintained for a period of 1 year from the date the origin declaration is made at retail.

Subpart B—[Reserved]

Dated: July 28, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–17562 Filed 7–28–08; 4:30 pm]

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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