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# Federal Register

8–29–08 Friday
Vol. 73 No. 169 Aug. 29, 2008

Pages 50871–51208

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# Presidential Documents

**Title 3—**

## The President

**Proclamation 8281 of August 26, 2008**

## National Ovarian Cancer Awareness Month, 2008

**By the President of the United States of America**

**A Proclamation**

During National Ovarian Cancer Awareness Month, we remember those whose lives have been affected by this deadly disease, and we underscore our commitment to battling ovarian cancer for the sake of women around the world.

Each year, thousands of American women are diagnosed with ovarian cancer. Many will lose their lives to this disease. Because ovarian cancer is often diagnosed at an advanced stage, it is vital for women to make regular visits to their doctors for screenings and to discuss risk factors and warning signs. Early detection is the best way to help doctors diagnose cancer before it has a chance to spread. It also makes treatment more effective and increases the chances for survival. I encourage all women to learn more about preventive measures and screening options that may help to save their lives.

America leads the world in medical research, and my Administration remains dedicated to the fight against ovarian cancer. I signed the ''Gynecologic Cancer Education and Awareness Act of 2005,'' or ''Johanna's Law,'' that helps to raise awareness among women and health care providers about female reproductive cancers. Additionally, the National Institutes of Health (NIH) and the Centers for Disease Control and Prevention are conducting important research to help make the innovative advances we need in order to eradicate this disease. NIH's Cancer Genome Atlas is also helping researchers gain a greater understanding of the genetic sources of cancer. Together, we will continue building on our progress until there is a cure for cancer. As we observe National Ovarian Cancer Awareness Month, we honor those who have fought this disease. We also recognize the compassionate caregivers, doctors, and researchers who are dedicated to preventing, detecting, and treating ovarian cancer.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 2008 as National Ovarian Cancer Awareness Month. I call upon government officials, businesses, communities, health care professionals, educators, volunteers, and the people of the United States to continue our Nation's strong commitment to preventing and treating ovarian cancer.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of August, in the year of our Lord two thousand eight, and of the Independence of the United States of America the two hundred and thirty-third.

[FR Doc. E8–20270
Filed 8–28–08; 8:45 am]
Billing code 3195–01–P

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# Presidential Documents

**Title 3—**

## The President

**Proclamation 8282 of August 26, 2008**

## National Preparedness Month, 2008

**By the President of the United States of America**

**A Proclamation**

During National Preparedness Month, we underscore the important responsibility Americans have to be ready for emergencies in our homes, businesses, and communities.

The Department of Homeland Security's *Ready* campaign highlights preparedness steps, including having an emergency supply kit, making a family emergency plan, and becoming informed about different types of emergencies. After preparing themselves and their families, Americans can take the next step and get involved in helping to prepare their communities for all types of emergencies. For more information, citizens may visit www.ready.gov and citizencorps.gov.

During National Preparedness Month, we also honor our Nation's police officers, firefighters, and emergency personnel for their hard work and commitment to protecting others. As first responders, they have demonstrated the true meaning of heroism by taking great risks to safeguard our communities, and all Americans are grateful for their efforts.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 2008 as National Preparedness Month. I call upon the people of the United States to recognize the importance of preparing for potential emergencies and to observe this month by participating in appropriate events, activities, and preparedness programs.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of August, in the year of our Lord two thousand eight, and of the Independence of the United States of America the two hundred and thirty-third.

[FR Doc. E8–20271
Filed 8–28–08; 8:45 am]
Billing code 3195–01–P

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### 7 CFR Part 6

### Adjustment of Appendices to the Dairy Tariff-Rate Import Quota Licensing Regulation for the 2008 Tariff-Rate Quota Year

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Final rule.

**SUMMARY:** This document sets forth the revised appendices to the Dairy Tariff-Rate Import Quota Licensing Regulation for the 2008 quota year reflecting the cumulative annual transfers from Appendix 1 to Appendix 2 for certain dairy product import licenses permanently surrendered by licensees or revoked by the Licensing Authority.

**DATES:** *Effective Date:* August 29, 2008.

**FOR FURTHER INFORMATION CONTACT:** Jorge Martinez, Dairy Import Licensing Program, Import and Trade Support Programs Division, STOP 1021, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–1021 or telephone at (202) 720–9439 or e-mail at *jorge.martinez@fas.usda.gov.*

**SUPPLEMENTARY INFORMATION:** The Foreign Agricultural Service, under a delegation of authority from the Secretary of Agriculture, administers the Dairy Tariff-Rate Import Quota Licensing Regulation codified at 7 CFR 6.20–6.37 that provides for the issuance of licenses to import certain dairy articles under tariff-rate quotas (TRQs) as set forth in the Harmonized Tariff Schedule of the United States. These dairy articles may only be entered into the United States at the low-tier tariff by or for the account of a person or firm to whom such licenses have been issued and only in accordance with the terms and conditions of the regulation.

Licenses are issued on a calendar year basis, and each license authorizes the license holder to import a specified quantity and type of dairy article from a specified country of origin. The Import and Trade Support Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture, issues these licenses and, in conjunction with the U.S. Customs and Border Protection, U.S. Department of Homeland Security, monitors their use.

The regulation at 7 CFR 6.34(a) states: ''Whenever a historical license (Appendix 1) is not issued to an applicant pursuant to the provisions of § 6.23, is permanently surrendered or is revoked by the Licensing Authority, the amount of such license will be transferred to Appendix 2.'' Section 6.34(b) provides that the cumulative annual transfers will be published in the **Federal Register**. Accordingly, this document sets forth the revised Appendices for the 2008 tariff-rate quota year.

### List of Subjects in 7 CFR Part 6

Agricultural commodities, Cheese, Dairy products, Imports, Reporting and recordkeeping requirements.

Issued at Washington, DC, the 20th day of June 2008.

**Ronald Lord,**

*Licensing Authority.*

■ Accordingly, 7 CFR Part 6 is amended as follows:

## PART 6—IMPORT QUOTAS AND FEES

■ 1. The authority citation for Part 6, Subpart—Dairy Tariff-Rate Import Quota Licensing continues to read as follows:

**Authority:** Additional U.S. Notes 6, 7, 8, 12, 14, 16–23 and 25 to Chapter 4 and General Note 15 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), Pub. L. 97–258, 96 Stat. 1051, as amended (31 U.S.C. 9701), and secs. 103 and 404, Pub. L. 103–465, 108 Stat. 4819 (19 U.S.C. 3513 and 3601).

■ 2. Appendices 1, 2 and 3 to Subpart—Dairy Tariff-Rate Import Quota Licensing are revised to read as follows:

### Appendices 1, 2 and 3 to Subpart—Dairy Tariff-Rate Import Quota Licensing

ARTICLES SUBJECT TO: APPENDIX 1, HISTORICAL LICENSES; APPENDIX 2, NONHISTORICAL LICENSES; AND APPENDIX 3, DESIGNATED IMPORTER LICENSES FOR QUOTA YEAR 2008

[Quantities in kilograms]

| Article by Additional U.S. Note Number and Country of Origin | Appendix 1 | Appendix 2 | Appendix 3 | |
|---|---|---|---|---|
| | | | Tokyo round | Uruguay round |
| NON-CHEESE ARTICLES | | | | |
| BUTTER (NOTE 6) | 5,361,732 | 1,615,268 | | |
| EU–25 | 75,918 | 20,243 | | |
| New Zealand | 116,998 | 33,595 | | |
| Other Countries | 54,504 | 19,431 | | |
| Any Country | 5,114,312 | 1,541,999 | | |
| DRIED SKIM MILK (NOTE 7) | | 5,261,000 | | |
| Australia | | 600,076 | | |
| Canada | | 219,565 | | |
| Any Country | | 4,441,359 | | |
| DRIED WHOLE MILK (NOTE 8) | 3,175 | 3,318,125 | | |
| New Zealand | 3,175 | | | |
| Any Country | | 3,318,125 | | |
| DRIED BUTTERMILK/WHEY (NOTE 12) | 12,760 | 212,221 | | |

ARTICLES SUBJECT TO: APPENDIX 1, HISTORICAL LICENSES; APPENDIX 2, NONHISTORICAL LICENSES; AND APPENDIX 3, DESIGNATED IMPORTER LICENSES FOR QUOTA YEAR 2008—Continued

[Quantities in kilograms]

| Article by Additional U.S. Note Number and Country of Origin | Appendix 1 | Appendix 2 | Appendix 3 | |
|---|---|---|---|---|
| | | | Tokyo round | Uruguay round |
| Canada | | 161,161 | | |
| New Zealand | 12,760 | 51,060 | | |
| BUTTER SUBSTITUTES CONTAINING OVER PERCENT OF BUTTERFAT AND/OR BUTTER OIL (NOTE 14) | | 6,080,500 | | |
| Any Country | | 6,080,500 | | |
| TOTAL: NON-CHEESE ARTICLES | 5,377,667 | 16,487,114 | | |
| CHEESE ARTICLES | | | | |
| CHEESE AND SUBSTITUTES FOR CHEESE (EXCEPT: SOFT RIPENED COW'S MILK CHEESE; CHEESE NOT CONTAINING COW'S MILK; CHEESE (EXCEPT COTTAGE CHEESE) CONTAINING 0.5 PERCENT OR LESS BY WEIGHT OF BUTTERFAT; AND, ARTICLES WITHIN THE SCOPE OF OTHER IMPORT QUOTAS PROVIDED FOR IN THIS SUB-CHAPTER) (NOTE 16) | 23,345,203 | 8,124,528 | 9,661,128 | 7,496,000 |
| Argentina | 7,690 | | 92,310 | |
| Australia | 535,628 | 5,542 | 758,830 | 1,750,000 |
| Canada | 1,013,777 | 127,223 | | |
| Costa Rica | | | | 1,550,000 |
| EU–25 | 16,147,453 | 7,120,203 | 1,132,568 | 3,446,000 |
| Of which Portugal is: | 65,838 | 63,471 | 223,691 | |
| Israel | 79,696 | | 593,304 | |
| Iceland | 294,000 | | 29,000 | |
| New Zealand | 4,443,558 | 371,914 | 6,506,528 | |
| Norway | 124,982 | 25,018 | | |
| Switzerland | 597,513 | 73,899 | 548,588 | 500,000 |
| Uruguay | | | | 250,000 |
| Other Countries | 100,906 | 100,729 | | |
| Any Country | | 300,000 | | |
| BLUE-MOLD CHEESE (EXCEPT STILTON PRODUCED IN THE UNITED KINGDOM) AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, BLUE-MOLD CHEESE (NOTE 17) | 2,285,947 | 195,054 | | 430,000 |
| Argentina | 2,000 | | | |
| EU–25 | 2,283,946 | 195,054 | | 350,000 |
| Chile | | | | 80,000 |
| Other Countries | 1 | | | |
| CHEDDAR CHEESE, AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, CHEDDAR CHEESE (NOTE 18) | 3,619,547 | 664,309 | 519,033 | 7,620,000 |
| Australia | 925,557 | 58,942 | 215,501 | 1,250,000 |
| Chile | | | | 220,000 |
| EU–25 | 52,404 | 210,596 | | 1,050,000 |
| New Zealand | 2,539,040 | 257,428 | 303,532 | 5,100,000 |
| Other Countries | 102,546 | 37,343 | | |
| Any Country | | 100,000 | | |
| AMERICAN-TYPE CHEESE, INCLUDING COLBY, WASHED CURD AND GRANULAR CHEESE (BUT NOT INCLUDING CHEDDAR) AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING OR PROCESSED FROM SUCH AMERICAN-TYPE CHEESE (NOTE 19) | 2,744,970 | 420,583 | 357,003 | |
| Australia | 789,626 | 91,372 | 119,002 | |
| EU–25 | 145,148 | 208,852 | | |
| New Zealand | 1,657,689 | 104,310 | 238,001 | |
| Other Countries | 152,507 | 16,049 | | |
| EDAM AND GOUDA CHEESE, AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, EDAM AND GOUDA CHEESE (NOTE 20) | 5,230,565 | 375,837 | | 1,210,000 |
| Argentina | 110,495 | 14,505 | | 110,000 |
| EU–25 | 5,000,990 | 288,010 | | 1,100,000 |
| Norway | 114,318 | 52,682 | | |
| Other Countries | 4,762 | 20,640 | | |
| ITALIAN-TYPE CHEESES, MADE FROM COW'S MILK, (ROMANO MADE FROM COW'S MILK, REGGIANO, PARMESAN, PROVOLONE, PROVOLETTI, SBRINZ, AND GOYA—NOT IN ORIGINAL LOAVES) AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, SUCH ITALIAN-TYPE CHEESES, WHETHER OR NOT IN ORIGINAL LOAVES (NOTE 21) | 6,467,087 | 1,053,460 | 795,517 | 5,165,000 |
| Argentina | 3,931,157 | 194,326 | 367,517 | 1,890,000 |

ARTICLES SUBJECT TO: APPENDIX 1, HISTORICAL LICENSES; APPENDIX 2, NONHISTORICAL LICENSES; AND APPENDIX 3, DESIGNATED IMPORTER LICENSES FOR QUOTA YEAR 2008—Continued

[Quantities in kilograms]

| Article by Additional U.S. Note Number and Country of Origin | Appendix 1 | Appendix 2 | Appendix 3 | |
|---|---|---|---|---|
| | | | Tokyo round | Uruguay round |
| EU–25 | 2,535,930 | 846,070 | | 2,025,000 |
| Romania | | | | 500,000 |
| Uruguay | | | 428,000 | 750,000 |
| Other Countries | | 13,064 | | |
| SWISS OR EMMENTHALER CHEESE OTHER THAN WITH EYE FORMATION, GRUYERE-PROCESS CHEESE AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, SUCH CHEESES (NOTE 22) | 5,371,777 | 1,279,537 | 823,519 | 380,000 |
| EU–25 | 4,102,587 | 1,049,407 | 393,006 | 380,000 |
| Switzerland | 1,235,692 | 183,795 | 430,513 | |
| Other Countries | 33,498 | 46,335 | | |
| CHEESE AND SUBSTITUTES FOR CHEESE, CONTAINING 0.5 PERCENT OR LESS BY WEIGHT OF BUTTERFAT (EXCEPT ARTICLES WITHIN THE SCOPE OF OTHER TARIFF-RATE QUOTAS PROVIDED FOR IN THIS SUBCHAPTER), AND MARGARINE CHEESE (NOTE 23) | 1,879,481 | 2,545,437 | 1,050,000 | |
| EU–25 | 1,879,480 | 2,545,437 | | |
| Israel | | | 50,000 | |
| New Zealand | | | 1,000,000 | |
| Other Countries | 1 | | | |
| SWISS OR EMMENTHALER CHEESE WITH EYE FORMATION (NOTE 25) | 16,078,683 | 6,218,648 | 9,557,945 | 2,620,000 |
| Argentina | | 9,115 | 70,885 | |
| Australia | 209,698 | | 290,302 | |
| Canada | | | 70,000 | |
| EU–25 | 11,198,973 | 5,277,855 | 4,003,172 | 2,420,000 |
| Iceland | 149,999 | | 150,001 | |
| Israel | 27,000 | | | |
| Norway | 3,187,264 | 468,046 | 3,227,690 | |
| Switzerland | 1,246,164 | 437,941 | 1,745,895 | 200,000 |
| Other Countries | 59,585 | 25,691 | | |
| TOTAL: CHEESE ARTICLES | 67,023,260 | 20,877,393 | 22,764,145 | 24,921,000 |

[FR Doc. E8–19976 Filed 8–28–08; 8:45 am]

BILLING CODE 3410–10–M

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Part 93

**[Docket No. APHIS–2007–0141]**

## Importation of Horses, Ruminants, Swine, and Dogs; Remove Panama From Lists of Regions Where Screwworm Is Considered To Exist

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations regarding the importation of live horses, ruminants, swine, and dogs by removing Panama from the lists of regions where screwworm is considered to exist. We are taking this action because the eradication of screwworm from Panama has been confirmed. This action will relieve certain screwworm-related certification and inspection requirements for live animals imported into the United States from Panama.

**DATES:** *Effective Date:* September 29, 2008.

**FOR FURTHER INFORMATION CONTACT:** Dr. Julia Punderson, Regionalization Evaluation Services—Import, Sanitary Trade Issues Team, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–0757.

**SUPPLEMENTARY INFORMATION:**

### Background

The regulations in 9 CFR part 93 (referred to below as the regulations), prohibit or restrict the importation of certain animals into the United States to prevent the introduction of pests and diseases of livestock and poultry, including New World screwworm (*Cochliomyia hominivorax*).

Screwworm, a pest native to tropical areas and currently found in South America and the Caribbean, causes extensive damage to livestock and other warm-blooded animals. Subparts C, D, E, and F of the regulations govern the importation of horses, ruminants, swine, and dogs, respectively, and include provisions for the inspection and treatment of these animals if imported from any region of the world where screwworm is considered to exist. Sections 93.301, 93.405, 93.505, and 93.600 list all the regions of the world where screwworm is considered to exist.

On May 16, 2008, we published in the **Federal Register** (73 FR 28382–28385, Docket No. APHIS–2007–0141) a proposal [1] to amend the regulations regarding live horses, ruminants, swine, and dogs by removing Panama from the lists of regions where screwworm is considered to exist in §§ 93.301, 93.405, 93.505, and 93.600.

We solicited comments concerning our proposal for 60 days ending July 15, 2008. We received one comment by that

[1] To view the proposed rule and the comment we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0141.*

date, from a private citizen. The comment did not address the removal of Panama from the list of regions where screwworm is considered to exist.

Therefore, for the reasons given in the proposed rule, we are adopting the proposed rule as a final rule, without change.

**Executive Order 12866 and Regulatory Flexibility Act**

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This final rule amends the regulations regarding the importation of live horses, ruminants, swine, and dogs by removing Panama from the lists of regions where screwworm is considered to exist. We are taking this action because the eradication of screwworm from Panama has been confirmed. This action will relieve certain screwworm-related certification and inspection requirements for live animals imported into the United States from Panama.

No significant change in program operations is anticipated as a result of this rule, nor will this action affect other Federal agencies, State governments, or local governments. The cost of all technical support activities, including establishment of animal quarantine control measures, treatment stations, maintenance of livestock census, screwworm surveillance, establishment and maintenance of laboratory support, and aerial dispersion of sterile screwworm flies in Panama is provided by the Commission for the Eradication and Prevention of Screwworm and the cooperative agreement funded by the U.S. Department of Agriculture and Panama's Ministry of Agriculture and Livestock Development. When importing live animals from a region where screwworm is considered to exist, the cost of any required testing (and treatment, if needed) is paid by the owner of the animals being shipped. Our removal of Panama from the list of regions where screwworm is considered to exist will reduce the cost for producers and others in Panama to export ruminants, swine, horses, and dogs to the United States.

The economic effects associated with this rule are likely to be limited. This is because the number of live animals exported into the United States from Panama is likely to remain small. Trade statistics indicate that since 2001, the United States has not imported any ruminants, swine, or dogs from Panama. Equine imports from Panama over this period have numbered only 163, which is approximately 0.06 percent of all horse imports.[2]

According to Small Business Administration size standards for beef cattle ranching and farming (North American Industry Classification System (NAICS) 112111), dairy cattle and milk production (NAICS 112120), hog and pig farming (NAICS 112210), sheep farming (NAICS 112410), goat farming (NAICS 112420),[3] and horse and other equine production (NAICS 112920), as well as the commercial production of dogs, which is classified under ''all other animal production'' (NAICS 112990), operations with not more than $750,000 in annual sales are considered small entities. We do not expect that these producers, small or otherwise, will be affected significantly by the change in Panama's screwworm status. This is because, for the reasons discussed above, live ruminants, swine, horses, and dogs from Panama do not play much, if any, of a role in their operations, and few susceptible live animals are expected to be exported.

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

**Executive Order 12988**

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

**Paperwork Reduction Act**

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

**List of Subjects in 9 CFR Part 93**

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

■ Accordingly, we are amending 9 CFR part 93 as follows:

[2] Based on U.S. Census Bureau data, as presented by Foreign Agricultural Service, USDA: *http://www.fas.usda.gov/ustrade/USTImHS10.asp?QI=onhline_trade_dataTRAD.*

[3] The ''all other animal production'' classification also includes the production of other animals, such as adornment birds (swans, peacocks, flamingos), alpacas, birds for sale, buffalos, cats, crickets, deer, elk, laboratory animals, llamas, rattlesnakes, worms, and breeding of pets.

## PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, FISH, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

■ 1. The authority citation for part 93 continues to read as follows:

**Authority:** 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

**§ 93.301 [Amended]**

■ 2. In § 93.301, paragraph (j) is amended by removing the word ''Panama,''.

**§ 93.405 [Amended]**

■ 3. In § 93.405, paragraph (a)(3) is amended by removing the word ''Panama,''.

**§ 93.505 [Amended]**

■ 4. In § 93.505, paragraph (b) is amended by removing the word ''Panama,''.

**§ 93.600 [Amended]**

■ 5. In § 93.600, paragraph (a) is amended by removing the word ''Panama,''.

Done in Washington, DC, this 25th day of August 2008.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. E8–20116 Filed 8–28–08; 8:45 am]

BILLING CODE 3410–34–P

## GENERAL SERVICES ADMINISTRATION

### 41 CFR Part 102–39

**[FMR Amendment 2008–07; FMR Case 2007–102–1; Docket 2007–0001; Sequence 3]**

**RIN 3090–AI38**

### Federal Management Regulation; FMR Case 2007–102–1, Replacement of Personal Property Pursuant to the Exchange/Sale Authority

**AGENCY:** Office of Governmentwide Policy, General Services Administration (GSA).

**ACTION:** Final rule.

**SUMMARY:** The General Services Administration is amending the Federal Management Regulation (FMR) by updating coverage on the replacement of personal property pursuant to the exchange/sale authority. The changes were prompted by recommendations of

the Federal Asset Management Evaluation (FAME) interagency working group led by GSA.

**DATES:** This final rule is effective August 29, 2008.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Mr. Robert Holcombe, Office of Governmentwide Policy, Office of Travel, Transportation, and Asset Management (MT), (202) 501–3828 or e-mail at *Robert.Holcombe@gsa.gov*. For information pertaining to status or publication schedules contact the Regulatory Secretariat, 1800 F Street, NW, Room 4035, Washington, DC, 20405, (202) 501–4755. Please cite FMR Amendment 2008–07, FMR case 2007–102–1.

**SUPPLEMENTARY INFORMATION:**

## A. Background

The General Services Administration's (GSA's) Office of Governmentwide Policy (OGP) facilitated the interagency Federal Asset Management Evaluation (FAME) initiative during 2004 and 2005. Discussions with GSA's Federal customers during this initiative revealed a perception that there were too many unnecessary restrictions and ''hurdles'' hindering the effective use of this authority. One of the recommendations of the FAME report (March 31, 2005) was to ''increase the flexibility of the exchange/sale program to promote the use of this authority throughout the Government.''

A proposed rule was published in the **Federal Register** on December 11, 2007 (72 FR 70266). Two Federal agencies provided comments. Those comments and GSA's response to the comments are as follows:

*Comment*: One comment questioned the need to expand the discussion of deviations to the exchange/sale regulations; particularly, which regulatory provisions are or are not subject to deviation. It was also noted that other GSA asset management regulations do not describe deviations to this extent.

*GSA Response*: FMR 102–39.25 is being added to clarify which regulatory provisions are subject to deviation. This is due to numerous questions received by GSA/OGP on this topic. Also, in contrast to the other GSA asset management regulations, most of the restrictions found in FMR 102–39 are not required by statute and therefore are subject to deviation where beneficial to the Federal Government. GSA has made no changes as a result of this comment.

*Comment*: One comment suggested that the answer to FMR 102–39.40 could be interpreted as requiring agencies to use the exchange/sale authority.

*GSA Response*: Agencies are not required to use the exchange/sale authority. In order to eliminate any confusion, GSA has clarified that agencies should consider using this authority. The text of FMR 102–39.40 has been modified in this final rule.

*Comment*: One comment questioned the discussion in FMR 102–39.40 comparing the retention of sales proceeds under the exchange/sale authority to the retention of sales proceeds when selling surplus property. The comment also indicated that use of the exchange/sale authority constitutes an illegal augmentation of appropriations.

*GSA Response*: The discussion of the handling of exchange/sale sales proceeds vs. surplus sales proceeds has been in the exchange/sale regulations for over 10 years. That discussion is included for the benefit of GSA's customers who are not aware of the difference. In summary, if an agency has a continuing need for an item, the agency may exchange or sell the item and use the proceeds to acquire a similar replacement item. Under that scenario, the agency should not report the item as excess. Also, the exchange/sale authority is NOT an illegal augmentation of appropriations; rather, the law expressly authorizes the use of sales proceeds in the acquisition of a similar item. GSA has made no changes as a result of this comment.

*Comment*: One comment objected to the language in a sentence being added to FMR 102–39.40 to explain to readers that exchange allowances and sales proceeds may only be used to offset the cost of replacement property, not services. The language at issue specifically addresses the use of exchange allowances and sales proceeds in the context of a contract for services.

*GSA Response*: It is essential to include this language so readers are clear that under a contract for services arrangement (which is fairly common with respect to certain types of personal property), exchange allowances and sales proceeds can only be used for property acquired under the contract, not services acquired under the contract. GSA has made no changes as a result of this comment.

*Comment*: One comment questioned an exception provided in FMR 102–39.60 for the handling of certain Department of Defense (DOD) property under the exchange/sale authority.

*GSA Response*: The exception at issue has been in the exchange/sale regulations for over six years. The exception exists because the DOD property concerned is generally not suitable for transfer to other Federal agencies or donation to State Agencies for Surplus Property. Also, DOD regulations sufficiently control the disposition of such property (*e.g.*, through requirements contained in the DOD 4160.21–M policies). GSA has made no changes as a result of this comment.

*Comment*: One comment objected to the elimination of a requirement in FMR 102–39.65 that the number of items acquired must equal the number of items exchanged or sold unless certain exceptions are met.

*GSA Response*: GSA is eliminating this requirement for several reasons. First, it is not required by statute. Also, through GSA's meetings and discussions with Federal agencies over recent years, GSA found that there is a great deal of confusion about the exceptions to the one-for-one requirement. Finally, GSA is aware of many instances where an agency would like to adhere to the requirement and replace property on a one-for-one basis but the agency is unable to receive sufficient funds from the sale and therefore has to ask GSA for a deviation from this requirement. This creates an administrative burden for agencies to prepare deviation requests and for GSA to process those requests. As the statute does not require the one-for-one requirement, GSA almost always approves such requests (as long as all other applicable requirements are met). GSA has made no changes as a result of this comment.

*Comment*: One comment objected to the addition of a requirement to FMR 102–39.85 that Federal agencies must report annually to GSA on property acquired under the exchange/sale authority.

*GSA Response*: GSA has reconsidered this proposed change, and will not go forward with it at this time.

*Comment*: Finally, two comments were based on a misunderstanding of how the proposed rule was presented. The proposed rule showed only the fourteen proposed changes to the FMR and the text affected by those changes. The proposed rule did not show text which is not being revised (except in some cases where immediately adjacent text was shown).

*GSA Response*: GSA has made no changes as a result of these comments.

## B. Executive Order 12866

This regulation is excepted from the definition of ''regulation'' or ''rule'' under Section 3(d)(3) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993 and,

therefore, was not subject to review under Section 6(b) of that Executive Order.

**C. Regulatory Flexibility Act**

This final rule is not required to be published in the **Federal Register** for notice and comment as per the exemption specified in 5 U.S.C. 553 (a)(2); therefore, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply.

**D. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because these final changes to the FMR 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.*

**E. Small Business Regulatory Enforcement Fairness Act**

This final rule is exempt from Congressional review under 5 U.S.C. 801 since it relates solely to agency management and personnel.

**List of Subjects in 41 CFR Part 102–39**

Government property management, Reporting and recordkeeping requirements, and Government property.

Dated: June 23, 2008.

**David L. Bibb,**

*Acting Administrator of General Services.*

■ For the reasons set forth in the preamble, GSA amends 41 CFR part 102–39 as set forth below:

## PART 102–39—REPLACEMENT OF PERSONAL PROPERTY PURSUANT TO THE EXCHANGE/SALE AUTHORITY

■ 1. The authority citation for 41 CFR part 102–39 is revised to read as follows:

**Authority:** 40 U.S.C. 121(c); 40 U.S.C. 503.

**§ 102–39.50 [Removed]**

■ 2. Remove § 102–39.50.

**§ 102–39.55 [Removed]**

■ 3. Remove § 102–39.55.

**§§ 102–39.5, 102–39.15, 102–39.25, 102–39.30, 102–39.35, 102–39.40, 102–39.45, 102–39.60, 102–39.65, 102–39.70, 102–39.75 [Redesignated]**

■ 4. Redesignate §§ 102–39.5, 102–39.15, 102–39.25, 102–39.30, 102–39.35, 102–39.40, 102–39.45, 102–39.60, 102–39.65, 102–39.70, 102–39.75 as follows:

| Old section | New section |
|---|---|
| 102–39.5 | 102–39.15 |
| 102–39.15 | 102–39.40 |
| 102–39.25 | 102–39.30 |
| 102–39.30 | 102–39.45 |
| 102–39.35 | 102–39.50 |
| 102–39.40 | 102–39.55 |
| 102–39.45 | 102–39.60 |
| 102–39.60 | 102–39.70 |
| 102–39.65 | 102–39.75 |
| 102–39.70 | 102–39.80 |
| 102–39.75 | 102–39.85 |

■ 5. Add new § 102–39.5 to read as follows:

**§ 102–39.5 What is the exchange/sale authority?**

The exchange/sale authority is a statutory provision, (40 U.S.C. 503), which states in part: ''In acquiring personal property, an executive agency may exchange or sell similar items and may apply the exchange allowance or proceeds of sale in whole or in part payment for the property acquired.''

■ 6. Amend § 102–39.20 by revising the definitions of the terms ''Acquire'', ''Replacement'', and ''Similar''; and, by alphabetically adding the terms and definitions ''Excess property'', ''Service Life Extension Program (SLEP)'', and ''Surplus property'' to read as follows:

**§ 102–39.20 What definitions apply to this part?**

* * * * *

*Acquire* means to procure or otherwise obtain personal property, including by lease (sometimes known as rent).

* * * * *

*Excess property* means any personal property under the control of any Federal agency that is no longer required for that agency's needs or responsibilities, as determined by the agency head or designee.

* * * * *

*Replacement* means the process of acquiring personal property to be used in place of personal property that is still needed but:

(1) No longer adequately performs the tasks for which it is used; or

(2) Does not meet the agency's need as well as the personal property to be acquired.

*Service Life Extension Program (SLEP)* means the modification of a personal property item undertaken to extend the life of the item beyond that which was previously planned. SLEPs extend capital asset life by retrofit, major modification, remanufacturing, betterment, or enhancement.

*Similar* means the acquired item(s) and replaced item(s):

(1) Are identical; or

(2) Fall within a single Federal Supply Classification (FSC) Group of property (includes any and all forms of property within a single FSC Group); or

(3) Are parts or containers for similar end items; or

(4) Are designed or constructed for the same purpose (includes any and all forms of property regardless of the FSC Group to which they are assigned).

*Surplus property* means excess personal property not required for the needs of any Federal agency, as determined by GSA under part 102–37 of this chapter.

■ 7. Add new § 102–39.25 to Subpart A to read as follows:

**§ 102–39.25 Which exchange/sale provisions are subject to deviation?**

All of the provisions in this part are subject to deviation (upon presentation of adequate justification) except those mandated by statute. See the link on ''Exchange/Sale'' at *www.gsa.gov/personalpropertypolicy* for additional information on requesting deviations from this part.

■ 8. Revise newly redesignated § 102–39.30 to read as follows:

**§ 102–39.30 How do I request a deviation from this part?**

See part 102–2 of this chapter (41 CFR part 102–2) to request a deviation from the requirements of this part.

■ 9. Add new § 102–39.35 to Subpart B to read as follows:

**§ 102–39.35 When should I consider using the exchange/sale authority?**

You should consider using the exchange/sale authority when replacing personal property.

■ 10. Transfer newly redesignated § 102–39.40 to Subpart B and revise the section to read as follows:

**§ 102–39.40 Why should I consider using the exchange/sale authority?**

You should consider using the exchange/sale authority to reduce the cost of replacement personal property. When you have personal property that is wearing out or obsolete and must be replaced, you should consider either exchanging or selling that property and using the exchange allowance or sales proceeds to offset the cost of the replacement personal property. Conversely, if you choose not to replace the property using the exchange/sale authority, you may declare it as excess and dispose of it through the normal disposal process as addressed in part 102–36 of this chapter. Keep in mind, however, that any net proceeds from the eventual sale of that property as surplus generally must be forwarded to the miscellaneous receipts account at the United States Treasury and thus would not be available to you. You may use the exchange/sale authority in the acquisition of personal property even if the acquisition is under a services contract, as long as the property

acquired under the services contract is similar to the property exchanged or sold (*e.g.*, for a SLEP, exchange allowances or sales proceeds would be available for replacement of similar items, but not for services).

■ 11. Amend newly redesignated § 102–39.55 by revising the section heading to read as follows:

**§ 102–39.55 When should I offer property I am exchanging or selling under the exchange/sale authority to other Federal agencies or State Agencies for Surplus Property (SASP)?**

* * * * *

■ 12. Amend newly redesignated § 102–39.60 by revising the section heading, the introductory text, paragraph (a), the note to paragraph (a), and paragraph (i) to read as follows:

**§ 102–39.60 What restrictions and prohibitions apply to the exchange/sale of personal property?**

Unless a deviation is requested of and approved by GSA as addressed in part 102–2 of this chapter and the provisions of §§ 102–39.25 and 102–39.30, you must not use the exchange/sale authority for:

(a) The following FSC groups of personal property:

10 Weapons.

11 Nuclear ordnance.

12 Fire control equipment.

14 Guided missiles.

15 Aircraft and airframe structural components (except FSC Class 1560 Airframe Structural Components).

42 Firefighting, rescue, and safety equipment.

44 Nuclear reactors (FSC Class 4470 only).

51 Hand tools.

54 Prefabricated structure and scaffolding (FSC Class 5410 Prefabricated and Portable Buildings, FSC Class 5411 Rigid Wall Shelters, and FSC Class 5419 Collective Modular Support System only).

68 Chemicals and chemical products, except medicinal chemicals.

84 Clothing, individual equipment, and insignia.

**Note to § 102–39.60(a)**: Under no circumstances will deviations be granted for FSC Class 1005, Guns through 30mm. Deviations are not required for Department of Defense (DoD) property in FSC Groups 10 (for classes other than FSC Class 1005), 12 and 14 for which the applicable DoD demilitarization requirements, and any other applicable regulations and statutes are met.

* * * * *

(i) Flight Safety Critical Aircraft Parts (FSCAP) and Critical Safety Items (CSI) unless you meet the provisions of § 102–33.370 of this title.

* * * * *

■ 13. New § 102–39.65 is added to Subpart B to read as follows:

**§ 102–39.65 What conditions apply to the exchange/sale of personal property?**

You may use the exchange/sale authority only if you meet all of the following conditions:

(a) The property exchanged or sold is similar to the property acquired;

(b) The property exchanged or sold is not excess or surplus and you have a continuing need for similar property;

(c) The property exchanged or sold was not acquired for the principal purpose of exchange or sale;

(d) When replacing personal property, the exchange allowance or sales proceeds from the disposition of that property may only be used to offset the cost of the replacement property, not services; and

(e) Except for transactions involving books and periodicals in your libraries, you document the basic facts associated with each exchange/sale transaction. At a minimum, the documentation must include:

(1) The FSC Group of the items exchanged or sold, and the items acquired;

(2) The number of items exchanged or sold, and the number of items acquired;

(3) The acquisition cost and exchange allowance or net sales proceeds of the items exchanged or sold, and the acquisition cost of the items acquired;

(4) The date of the transaction(s);

(5) The parties involved; and

(6) A statement that the transactions comply with the requirements of this part 102–39.

**Note to § 102–39.65**: In acquiring items for historical preservation or display at Federal museums, you may exchange historic items in the museum property account without regard to the FSC group, provided the exchange transaction is documented and certified by the head of your agency to be in the best interests of the Government and all other provisions of this part are met. The documentation must contain a determination that the item exchanged and the item acquired are historic items.

■ 14. Revise newly redesignated § 102–39.80 to read asfollows:

**§ 102–39.80 What are the accounting requirements for exchange allowances or proceeds of sale?**

You must account for exchange allowances or proceeds of sale in accordance with the general finance and accounting rules applicable to you. Except as otherwise authorized by law, all exchange allowances or proceeds of sale under this part will be available during the fiscal year in which the property was sold and for one fiscal year thereafter for the purchase of replacement property. Any proceeds of sale not applied to replacement purchases during this time must be deposited in the United States Treasury as miscellaneous receipts.

[FR Doc. E8–19892 Filed 8–28–08; 8:45 am]

BILLING CODE 6820–14–S

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

### 44 CFR Parts 206 and 207

**[Docket ID FEMA–2006–0035]**

**RIN 1660–AA21**

### Management Costs

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Reopening of comment period.

**SUMMARY:** The Management Cost Interim Rule implemented the management cost provisions in section 324 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended. The Federal Emergency Management Agency (FEMA) is reopening the public comment period on its Management Cost Interim Rule. FEMA is taking this action to solicit data from grantees and subgrantees to use in reevaluating the fixed management cost rates established in the rule.

**DATES:** Comments are due on or before September 29, 2008.

**ADDRESSES:** You may submit comments, identified by Docket ID FEMA–2006–0035, by one of the following methods:

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

*E-mail: FEMA–RULES@dhs.gov.* Include Docket ID FEMA–2006–0035 in the subject line of the message.

*Fax:* 866–466–5370.

*Mail/Hand Delivery/Courier:* Rules Docket Clerk, Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472.

**FOR FURTHER INFORMATION CONTACT:** Jonna M. Long, Office of the Chief Financial Officer, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, 202–646–7057, (facsimile) (202) 646–4268 (phone), or (e-mail) *jonna.long@dhs.gov.*

**SUPPLEMENTARY INFORMATION:**

## Background

Under the provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5121–5207, and its implementing regulations, the Federal Emergency Management Agency (FEMA) has the authority to assist State and local governments in carrying out their responsibilities pursuant to a Presidentially-declared major disaster or emergency. Two of the major programs authorized by the Stafford Act that provide assistance to State and local governments are the Public Assistance (PA) program (grants for emergency protective measures, debris removal, and repair, replacement, or restoration of facilities not met by insurance) and the Hazard Mitigation Grant Program (HMGP) (grants for sustained mitigation measures such as acquisition for open space, elevations of flood prone properties, and wind or seismic retrofitting of structures that will reduce or permanently eliminate the long-term risk to people and property from natural hazards and their effects).

Section 324 of the Stafford Act, 42 U.S.C. 5165b, required FEMA to establish management cost rates for PA and HMGP grantees and subgrantees to be used in determining contributions for management costs. On August 30, 2002, FEMA published a Notice of Proposed Rulemaking that proposed a methodology for calculating the management cost rates, as well as guidance for the implementation of section 324 of the Stafford Act (67 FR 56130). FEMA provided a 30 day comment period for the Notice of Proposed Rulemaking and considered the comments received in drafting the Interim Rule that was published on October 11, 2007 (72 FR 57869). For the Interim Rule, FEMA again provided a 30 day comment period. FEMA received 34 public comments on the Interim Rule (all of which are available in the docket for public inspection). Although FEMA continues to review those comments and will address them in the final rule, FEMA realized that it would be useful to solicit more specific information to properly address issues that were raised in those comments.

''Management costs,'' for purposes of the implementing regulation, include any indirect costs, any administrative expenses and any other expenses not directly chargeable to a specific project that are reasonably incurred by a grantee or subgrantee in administering and managing a PA program or HMGP grant award. As established by the Interim Rule, FEMA determines the amount of management costs based on a flat percentage rate of the Federal share of projected eligible program costs for financial assistance. The flat percentage rate for PA is 3.34 percent for major disaster declarations, and 3.90 percent for emergencies. The HMGP rate is 4.89 percent for major disaster declarations. The management cost funds provided are in addition to the grantee's PA and HMGP funds and do not require a non-Federal cost share.

The management cost rates set forth in the Interim Rule replaced what FEMA previously paid State and local governments for associated costs through the ''sliding scale,'' State management costs, and grantee indirect costs. The percentages for reimbursement are based on historical average obligations. To create the figures in the Interim Rule, FEMA used data collected in the National Emergency Management Information System (NEMIS) for declarations from August 1998 to July 2004. FEMA added together actual obligations representing the Federal share of all PA projects for major disasters declared during that period. Obligations for sliding scale, State management costs, and grantee indirect costs were excluded from project obligations and were added together separately. Those totals were used to calculate the percentage of ''pure'' project dollars that historically has been required for administration and management.

The same calculations were performed for HMGP projects under major disaster declarations and PA projects under emergency declarations.

## Request for Comments

*Instructions:* All Submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or supporting material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the Privacy and Use Notice link on the Administration Navigation Bar of *http://www.regulations.gov.*

Although comments on other aspects of the interim rule will not be rejected, FEMA solicits data in response to the specific requests set out below:

*Request 1*

Prior to November 13, 2007, FEMA used three mechanisms to reimburse grantees and subgrantees for management and administration costs:

a. *''Sliding Scale''*—per section 406(f) of the Stafford Act, FEMA reimbursed States for extraordinary costs incurred for preparation of damage survey reports, final inspection reports, project applications, final audits, and related field inspections by State employees, including overtime pay and per diem and travel expense of such employees but not including pay for regular time of such employees, based on the total amount of assistance provided under section 403, 404, 406, 407, 502, and 503. Such funds were cost shared at the prevailing cost share rate for the declaration.

FEMA reimbursed subgrantees for associated expenses including necessary costs of requesting, obtaining, and administering Federal assistance. Such funds were 100 percent federally-funded.

b. *Category Z State Management Administrative Costs*—FEMA reimbursed State costs consistent with OMB Circular No. A–87 guidance, including such items as straight time salaries of State employees; straight time and overtime salaries, per diem and travel of contractors administering PA or HMGP grants; Emergency Management Assistance Compact (EMAC) costs for PA grants management; materials; equipment; *etc.* Such funds were cost shared at the prevailing cost share rate for the declaration.

c. *Indirect Costs*—FEMA reimbursed States for costs incurred for a common or joint purpose benefiting more than one cost objective that were not readily assignable to projects, if such costs were part of an approved Indirect Cost Rate Plan. Such funds were cost shared at the prevailing cost share rate for the declaration.

FEMA requests that grantees and subgrantees submit data on unreimbursed management costs incurred in the management and administration of Public Assistance (PA) and/or the Hazard Mitigation Grant Program (HMGP) prior to implementation of the Interim Rule on November 13, 2007. Specific costs and descriptions are needed and all costs must be attributable to and identified by a specific FEMA declaration number (DR–XXXX–ST or EM–XXXX–ST).

To assist grantees and subgrantees in answering this request, unreimbursed costs might include items eligible for sliding scale funds when such funds were insufficient, or subgrantee costs not eligible for sliding scale funds and therefore not eligible for FEMA reimbursement. Unreimbursed costs must have been incurred in support of the management and administration of

PA or HMGP under a specific Presidential declaration (major disaster or emergency for PA or major disaster for HMGP), and not in support of other programs such as community relations or Disaster Recovery Center staff, or staff supporting Individual Assistance programs. Unreimbursed costs do not include State cost shares required for sliding scale, Category Z, or indirect cost funding, nor do they include costs that were not reimbursed because they were inconsistent with applicable Federal rules and cost principles, such as OMB Circular No. A–87.

*Request 2*

FEMA requests that grantees and subgrantees submit available data on unreimbursed management costs incurred in the management and administration of Public Assistance (PA) and/or the Hazard Mitigation Grant Program (HMGP) under a specific Presidential declaration (major disaster or emergency for PA or major disaster for HMGP) since November 13, 2007. Specific costs and descriptions are needed and must be identified by FEMA declaration number.

**Viewing the Docket**

For access to the docket to submit comments, read the Notice of Proposed Rulemaking, Interim Rule, background documents and all comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov.* To the far right is a section titled ''More Search Options.'' Below that title, click on ''Advanced Docket Search.'' On the next screen, in the box provided for Docket ID, type ''FEMA–2006–0035''. The next screen will provide a link to the docket. Once viewing the docket, all documents are provided in chronological order, beginning with the 2002 Notice of Proposed Rulemaking. Submitted comments may also be inspected at Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472.

Dated: August 22, 2008.

**R. David Paulison**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. E8–19983 Filed 8–28–08; 8:45 am]

**BILLING CODE 9110–49–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### 49 CFR Part 240

### Qualification and Certification of Locomotive Engineers

**AGENCY:** Federal Railroad Administration (FRA), DOT.

**ACTION:** Interpretation.

**SUMMARY:** FRA is issuing this notice of interpretation to inform interested parties of its application and enforcement of the requirements for each railroad responsible for controlling joint operations territory to maintain a list of person(s) certified as a qualified locomotive engineer for the purposes of the joint operations. FRA has discovered that a number of controlling railroads are not maintaining accurate lists primarily because foreign railroads are not providing the controlling railroads with accurate information and the controlling railroads are not demanding it. If an accurate list is not maintained, a controlling railroad has little chance of preventing an uncertified or unqualified person from operating a locomotive or train in the joint operations territory. This document is intended to inform interested parties of what information is required to be maintained on the required list and provides information as to how often the listings should be updated.

**ADDRESSES:** You may submit comments to Douglas Taylor, Staff Director, Operating Practices Division, or John Conklin, Program Manager Locomotive Engineer Certification, FRA Office of Safety Assurance and Compliance, by facsimile (202–493–6216) or e-mail (*douglas.taylor@dot.gov*) or (*john.conklin@dot.gov*). Comments may also be submitted to Alan Nagler, FRA Office of Chief Counsel, by facsimile (202–493–6068) or e-mail (*alan.nagler@dot.gov*).

**FOR FURTHER INFORMATION CONTACT:** Douglas H. Taylor, Staff Director, Operating Practices Division, Office of Safety Assurance and Compliance, FRA, 1200 New Jersey Avenue, SE., RRS–11, Mail Stop 25, Washington, DC 20590 (telephone 202–493–6255); John Conklin, Program Manager Locomotive Engineer Certification, Office of Safety Assurance and Compliance, FRA, 1200 New Jersey Avenue, SE., RRS–11, Mail Stop 25, Washington, DC 20590 (telephone 202 493–6318); or Alan H. Nagler, Senior Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue, SE., RCC–11, Mail Stop 10, Washington, DC 20590 (telephone 202–493–6038).

**SUPPLEMENTARY INFORMATION:**

**I. General Background**

In 1991, FRA published a final rule requiring each railroad to qualify and certify each person the railroad would allow to operate a locomotive or train over its system. *See* 56 FR 28228. The final rule also required a railroad to maintain written listings identifying each person designated by it as: (i) A supervisor of locomotive engineers, (ii) a certified locomotive engineer, and (iii) a certified and qualified locomotive engineer for the purposes of joint operations. *See* 49 CFR 240.221(a) through (c). For each certified engineer, the listing is required to indicate the class of service the railroad determines the person is qualified to perform and the date of the railroad's certification decision. The rule specifies that the listing required by paragraphs (a), (b), and (c) shall be updated at least annually and that a railroad may obtain approval from FRA to maintain the listing electronically. *See* § 240.221(d) and (f). The rule also specifies where these records are required to be kept so that FRA may inspect and copy them during regular business hours. The requirements found in § 240.221 have not been amended since they became effective on September 17, 1991.

Overall, the industry is in substantial compliance with the requirements for identification of qualified persons under § 240.221. FRA has not noticed significant non-compliance with maintaining the lists required for a railroad's own employees, i.e., its own supervisors of locomotive engineers or its own certified locomotive engineers. Again, for its own employees, most railroads periodically update the listing with all the required information ''so that it retains its usefulness'' which FRA described as the goal of the listing in the section-by-section analysis when the rule was published. *See* 56 FR at 28249.

The purpose of this document is to address issues related to maintaining the listing of those locomotive engineers employed by other railroads (foreign locomotive engineers) that have been designated as certified and qualified for the purposes of joint operations pursuant to § 240.221(c). Several railroads that have been found not properly maintaining a listing of foreign locomotive engineers certified and qualified for joint operations have taken some affirmative actions to come into compliance. However, the number of railroads in partial non-compliance is sufficiently wide-spread that FRA believes that clarification of the

regulatory requirements is necessary to ensure even greater industry-wide compliance.

Unless a foreign locomotive engineer solely operates in the joint operation with a certified pilot or the regulatory requirements for ''minimal joint operations'' exist, the foreign locomotive engineer is required to be certified and qualified for purposes of the joint operations and is required to be on the listing required by § 240.221(c). *See* § 240.229(a), (e) and (f). Even though the foreign locomotive engineer is not employed by the controlling railroad, the controlling railroad is required to determine that the person is certified and qualified for purposes of the joint operations. *See* § 240.229(a). The controlling railroad must choose between certifying and qualifying the person directly, or indirectly relying on the certification issued by another railroad under certain specific conditions. *See* § 240.229(b) and (c). FRA has previously provided guidance regarding steps a controlling railroad can take to ensure that any foreign locomotive engineers operating over its lines are properly trained for those joint operations if the controlling railroad would like to rely on the certification issued by another railroad. The guidance intimates that blind acceptance of a foreign railroad's list of qualified engineers does not satisfy the intent of the regulation that permits a controlling railroad to indirectly certify and qualify a foreign railroads locomotive engineers. *See* Technical Bulletin OP–2000–01, redesignated as Technical Bulletin OP–04–21 (February 3, 2004) available on FRA's Web site at *http://www.fra.dot.gov*) After a person is certified and qualified for purposes of the joint operations, the controlling railroad must choose between issuing its own certificate to the foreign locomotive engineer or noting its ''supplemental certificate decision'' on the employing railroad's ''original certificate.'' *See* § 240.229(a) and (d).

## II. Controlling Railroad's Responsibility To Maintain an Accurate Listing

### *A. What are the options for a controlling railroad?*

A controlling railroad that directly certifies and qualifies foreign locomotive engineers is likely to be in compliance with maintaining the required listing because it controls the information that is needed to maintain the list under § 240.221(c). Controlling railroads that choose to directly certify and qualify foreign locomotive engineers are typically short line or regional railroads with either a small number of foreign locomotive engineers or with limited joint operations. Railroads that choose to directly certify and qualify are able to maintain greater control over who is allowed to operate over the railroad's system.

In contrast, a controlling railroad that indirectly certifies and qualifies foreign locomotive engineers is reliant on the foreign railroad to provide accurate and complete information. It is standard practice on the major railroads to indirectly certify and qualify foreign locomotive engineers. Controlling railroads that choose to indirectly certify and qualify are willing to relinquish some control over who is allowed to operate over the railroad's system. Despite being reliant on another railroad for information about foreign locomotive engineers, a controlling railroad is obligated to maintain the required listing. Thus, the controlling railroad must ensure and demand that accurate and complete information is provided from foreign railroads that engage in joint operations.

### *B. Why is an interpretation necessary?*

FRA has not previously issued any specific written guidance on how to comply with the requirements related to maintaining accurate lists of qualified and certified locomotive engineers contained in § 240.221. FRA acknowledges that its personnel may have incorrectly instructed some controlling railroads that compliance was achieved when it accepted a complete list of each engineer certified by a foreign railroad even though the list failed to indicate which engineers were certified and qualified to operate in the joint operations territory. In order to ensure a consistent, nation-wide policy, we are publishing this notice of interpretation to clarify the agency's position.

### *C. What is FRA's interpretation?*

FRA's interprets § 240.221(c) as requiring the controlling railroad to maintain a list that specifically identifies each foreign railroad locomotive engineer that is deemed certified and qualified to operate over the joint operation. Thus, it is unacceptable for a foreign railroad to simply provide a list of all its certified engineers without distinguishing which engineers are certified and qualified in the joint operations. Section 240.221(c) does not require that the listing kept by a controlling railroad of a joint operation identify each locomotive engineer that a foreign railroad has certified on the foreign railroad's system. The regulation only requires that a person be added to the controlling railroad's listing if the person is a foreign locomotive engineer who is certified and qualified for the purposes of joint operations. Although railroads may choose to exchange more information that identifies different types of qualified persons than what is required by the regulation, a list that is over-inclusive is simply not an accurate list. If a foreign railroad decides to provide a controlling railroad with a complete listing of all its certified locomotive engineers, the foreign railroad and the controlling railroad must specifically distinguish those locomotive engineers who are certified and qualified to operate in the joint operations territory from those who are not so certified and qualified.

## III. Frequency of Listing Updates

### *A. Why is an interpretation necessary?*

The provision contained in § 240.221(d) states that ''[t]he listing required by paragraphs (a), (b), and (c) shall be updated at least annually'' and several railroads have complained that it is not useful to keep a listing that only needs to be updated annually. These parties have argued that even if a listing is updated annually, it will likely become outdated quickly because the number of certified and qualified engineers is in a constant state of flux. FRA disagrees with this interpretation and believes the rule requires maintenance of the listing so it retains its usefulness.

### *B. What is FRA's interpretation?*

The plain language of the regulation does not state that the ''listing only needs to be updated annually'' but, instead, specifically requires that it ''shall be updated *at least* annually.'' § 240.221(d) (emphasis added). Thus, the plain language of the regulation contemplates updating the required listings more frequently than once a year and that, at a minimum, the listings must be updated annually. The only time the annual requirement is relevant is in those situations where a controlling railroad does not have any changes to make to its listing of qualified locomotive engineers over an entire year and then paragraph (d) would require that the listing be checked and updated at the end of the year. Moreover, FRA's intent when publishing the final rule was to require the listings to be updated whenever a change to the listing occurs so that the listing remains current. The section-by-section analysis contained in the final rule explained that ''FRA has specifically provided for the periodic updating of the list so that it retains its

usefulness.'' 56 FR at 28249. FRA intended that the listing be updated whenever it does not accurately identify the person(s) certified and qualified (i.e., when the listing's usefulness is diminished). Ideally, the listing should be updated each time a person is newly certified and qualified, and each time a person is no longer considered certified or qualified.

With regard to updating the listing of foreign locomotive engineers in joint operation territories, it should be noted that FRA considers it more important to remove the name of any foreign engineer who is no longer considered certified or qualified for joint operations territory then to fail to add a person who has recently become certified and qualified. When a controlling railroad questions a foreign engineer's certification or qualifications and the engineer's name is not found on the list, the controlling railroad would be expected to immediately contact the foreign railroad in order to confirm the person's status before allowing the foreign engineer to proceed into the joint operations territory. Alternatively, if a controlling railroad were to question a foreign engineer's certification or qualifications and the engineer's name is found on the list, the controlling railroad would likely be expected to rely on the list and would be exercising due diligence in doing so. If the list is incorrect and the person's name should have been removed, the controlling railroad cannot be expected to prevent an unqualified person from operating in the joint operations territory.

Several major railroads have voiced concern that because the listing is in such a constant state of flux, it would be extremely difficult to maintain an accurate listing at all times. In the joint operation context, a major railroad may face the challenge of coordinating a listing that includes separate lists submitted by more than 100 foreign railroads. Although FRA agrees that it will be challenging for some railroads that allow extensive joint operations to maintain an accurate written list, such railroads may find it easier to comply by maintaining the listing electronically. Maintaining the listing electronically has always been an option pursuant to § 240.221(f), but it has not been extensively utilized. There is no question that modern technology has greatly improved since the rule's issuance in 1991, and thus the ability and desire to electronically maintain the listing should be much greater. For example, it is possible to maintain a secure Web site where a controlling railroad can search a foreign railroad's uploaded list of locomotive engineers to check: (1) Whether the person is certified and qualified for the joint operations territory; (2) the person's class of service; and, (3) the date of the railroad's certification decision. Another option may be for a foreign railroad to tap into its railroad crew management tracking system to produce a more detailed written or electronic list of its engineers to controlling railroads than what is currently being made available. Other electronically maintained options may be available and FRA encourages railroads controlling joint operations to consider options that would improve the usefulness of the required listing. Any railroad that would like to maintain the listing electronically is required to obtain approval from FRA pursuant to the requirements in § 240.221(f).

While FRA recognizes that recent changes in status to any particular engineer might not be reflected in the listing immediately, FRA expects the listing to be updated with enough regularity so that it retains its usefulness.

FRA believes that this notice provides sufficient information to guide parties that may have been confused by the requirements of § 240.221. However, FRA seeks comments on this notice from interested parties including any suggestions for providing more clarity, if necessary. Please refer to the Addresses section for additional information regarding the submission of comments.

Issued in Washington DC on August 21, 2008.

**Jo Strang,**

*Associate Administrator for Safety.*

[FR Doc. E8–20032 Filed 8–28–08; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Part 541

**[Docket No. NHTSA–2008–0049]**

**RIN 2127–AK31**

### Federal Motor Vehicle Theft Prevention Standard; Final Listing of 2009 Light Duty Truck Lines Subject to the Requirements of This Standard and Exempted Vehicle Lines for Model Year 2009

*Correction*

In rule document E8–18890 beginning on page 47847 in the issue of Friday, August 15, 2008, make the following correction:

**Appendix A–I to Part 541 [Corrected]**

On page 47849, in Appendix A–I to Part 541, in the second column of the table, in the 44th line entry, ''Genesis[3]'' should read''Genesis[1]''.

[FR Doc. Z8–18890 Filed 8–28–08; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 635

**RIN 0648–XJ69**

### Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

**ACTION:** Temporary rule; inseason retention limit adjustment.

**SUMMARY:** NMFS has determined that the Atlantic tunas General category daily Atlantic bluefin tuna (BFT) retention limit should be adjusted for the September, October-November, and December time periods of the 2008 fishing year, based on consideration of the determination criteria regarding inseason adjustments.

**DATES:** The effective dates for the adjusted BFT daily retention limits are September 1, 2008, through December 31, 2008.

**FOR FURTHER INFORMATION CONTACT:** Sarah McLaughlin or Brad McHale, 978–281–9260.

**SUPPLEMENTARY INFORMATION:** Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the Consolidated Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP). The latest (2006) ICCAT recommendation for western Atlantic BFT included a U.S. quota of 1,190.12 mt, effective beginning in 2007, through 2008, and thereafter until changed (i.e., via a new ICCAT

recommendation). It is possible that additional changes to the daily retention limit (i.e., for the January 2009 General category fishery) may be necessary following ICCAT's annual meeting in November 2008.

The 2008 fishing year began on January 1, 2008, and ends December 31, 2008. NMFS published final specifications on December 31, 2007 (72 FR 74193) and increased the default General category retention limit of one large medium or giant BFT (measuring 73 inches (185 cm) curved fork length (CFL) or greater) per vessel per day/trip to three large medium or giant BFT, measuring 73 inches CFL or greater, per vessel per day/trip for June 1 through August 31, 2008. Regardless of the duration of a fishing trip, no more than the daily retention limit may be on board a vessel. In addition, NMFS stated that it would consider adjustment of retention limits for future time periods, if warranted. In 2007, NMFS followed a similar course of action and raised General category retention limits via inseason actions to allow for a continuous three BFT retention limit, including for the January 2008 time period (72 FR 50257, August 31, 2007 and 72 FR 61565, October 31, 2007) .

**Adjustment of General Category Daily Retention Limits**

Under 50 CFR 635.23(a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range of zero to a maximum of three per vessel based on consideration of the criteria provided under § 635.27(a)(8), which include: the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; the catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made; the projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year; the estimated amounts by which quotas for other gear categories of the fishery might be exceeded; effects of the adjustment on BFT rebuilding and overfishing; effects of the adjustment on accomplishing the objectives of the fishery management plan; variations in seasonal distribution, abundance, or migration patterns of BFT; effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota; and a review of dealer reports, daily landing trends, and the availability of the BFT on the fishing grounds.

As of August 1, 2008, the coastwide General category has landed 50.8 metric tons (mt) out of a possible 740 mt, and landings rates remain less that 1.0 mt per day even though the General category retention limit was increased to three BFT per vessel per trip, measuring 73 inches (185 cm) CFL or greater for January and for June through August 2008. Starting on September 1, 2008, the General category daily retention limit, located at 50 CFR 635.23(a)(2), is scheduled to revert back to the default retention limit of one large medium or giant BFT (measuring 73 inches (185 cm) CFL) or greater per vessel per day/trip. This scheduled retention limit applies to General category permitted vessels and HMS Charter/Headboat category permitted vessels (when fishing commercially for BFT).

Each of the General category time periods (January, June-August, September, October-November, and December) is allocated a portion of the annual General category quota, thereby ensuring extended fishing opportunities in years when catch rates are high. In consideration of the rollover of unused quota from the January and June-August time periods, current catch rates, and the daily retention limit reverting to one large medium or giant BFT per vessel per day on September 1, 2008, NMFS anticipates the full 2008 fishing year General category quota will not be harvested. Adding an excessive amount of unused quota from one time-period subquota to the subsequent time-period subquota is undesirable because it effectively changes the time-period subquota allocation percentages established in the Consolidated HMS FMP and may contribute to excessive carryovers to subsequent fishing years.

NMFS has considered the set of criteria cited above and their applicability to the commercial BFT retention limit for the remainder of the 2008 fishing year. Based on these considerations, NMFS has determined that the General category retention should be adjusted to allow for retention of the established General category quota. Therefore, NMFS increases the General category retention limit from the default limits effective September 1, 2008, through December 31, 2008. This adjustment increases the General category daily retention limit to three large medium or giant BFT, measuring 73 inches (185 cm) CFL or greater, per vessel per day/trip. This General category retention limit is effective in all areas, except for the Gulf of Mexico, and applies to those vessel permitted in the General category as well as to those HMS Charter/Headboat permitted vessels fishing commercially for BFT.

This adjustment is intended to provide a reasonable opportunity to harvest the U.S. landings quota of BFT while maintaining an equitable distribution of fishing opportunities, to help achieve optimum yield in the General category BFT fishery, to collect a broad range of data for stock monitoring purposes, and to be consistent with the objectives of the Consolidated HMS FMP.

**Monitoring and Reporting**

NMFS selected the daily retention limit and the duration after examining an array of data as it pertains to the determination criteria. These data included, but were not limited to, current and previous catch and effort rates, quota availability, previous public comments on inseason management measures, stock status, etc. NMFS will continue to monitor the BFT fishery closely through the mandatory dealer landing reports, which NMFS requires to be submitted within 24 hours of a dealer receiving BFT. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional retention limit adjustments are necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas.

Closures or subsequent adjustments to the daily retention limits, if any, will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (888) 872–8862 or (978) 281–9260, or access the internet at *www.hmspermits.gov*, for updates on quota monitoring and retention limit adjustments.

**Classification**

The Assistant Administrator for NMFS (AA), finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

NMFS continues to receive information refining its understanding of the commercial sector's specific needs regarding retention limits through the latter portions of the 2008 season. NMFS assessments and analyses show catch rates to date have been low and that there is sufficient quota for an increase to the General category retention limit during the months of September through December 2008.

The regulations implementing the Consolidated HMS FMP provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT

fishery. Affording prior notice and opportunity for public comment to implement these retention limits is impracticable as it would preclude NMFS from acting promptly to allow harvest of BFT that are available on the fishing grounds. Analysis of available data shows that the General category BFT retention limits may be increased with minimal risks of exceeding the ICCAT-allocated quota.

Delays in increasing these retention limits would adversely affect those General and Charter/Headboat category vessels that would otherwise have an opportunity to harvest more than the default retention limit of one BFT per day and may exacerbate the problem of low catch rates and quota rollovers. Limited opportunities to harvest the respective quotas may have negative social and economic impacts to U.S. fishermen that either depend upon catching the available quota within the time periods designated in the Consolidated HMS FMP. Adjustment to the retention limit needs to be effective September 1, 2008, to minimize any unnecessary disruption in fishing patterns and for the impacted sectors to benefit from the adjustments so as to not preclude fishing opportunities from fishermen who only have access to the fishery during this time period.

Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, and because this action relieves a restriction (i.e., current default retention limit is one fish per vessel/trip but this action increases that limit and allows retention of more fish), there is also good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under 50 CFR 635.23(a)(4) and (b)(3) and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: August 26, 2008.

**Emily H. Menashes,**

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

[FR Doc. E8–20181 Filed 8–28–08; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 071106671–8010–02]**

**RIN 0648–XK11**

## Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 in the Gulf of Alaska

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for pollock in Statistical Area 630 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the C season allowance of the 2008 total allowable catch (TAC) of pollock for Statistical Area 630 in the GOA.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), August 26, 2008, through 1200 hrs, A.l.t., October 1, 2008.

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

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

The C season allowance of the 2008 TAC of pollock in Statistical Area 630 of the GOA is 4,431 metric tons (mt) as established by the 2008 and 2009 harvest specifications for groundfish of the GOA (73 FR 10562, February 27, 2008). In accordance with § 679.20(a)(5)(iv)(B) the Administrator, Alaska Region, NMFS (Regional Administrator), hereby decreases the C season pollock allowance by 753 mt, the amount of the B season allowance of the pollock TAC that was exceeded in Statistical Area 630. Therefore, the revised C season allowance of the pollock TAC in Statistical Area 630 is 3,678 mt (4,431 mt minus 753 mt).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the C season allowance of the 2008 TAC of pollock in Statistical Area 630 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,518 mt, and is setting aside the remaining 160 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA.

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

### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of pollock in Statistical Area 630 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 25, 2008.

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

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

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

Dated: August 26, 2008.

**Emily H. Menashes,**

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

[FR Doc. E8–20156 Filed 8–26–08; 8:45 am]

BILLING CODE 3510–22–S

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

**RIN 0648–AR72**

## Fisheries of the Exclusive Economic Zone Off Alaska; Improved Retention/Improved Utilization

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

**ACTION:** Final rule: agency decision.

**SUMMARY:** NMFS announces the approval of Amendment 72 to the Fishery Management Plan for Groundfish of the Gulf of Alaska. Amendment 72 amends the FMP to state that the Council will annually review information on the discard of shallow-water flatfish in Gulf of Alaska groundfish fisheries. After review of this annual information, the Council may recommend revisions to retention and utilization requirements if the discard rate for shallow-water flatfish falls above or below a specified threshold. This action is necessary to support the Council's initiatives to monitor and reduce bycatch in the Gulf of Alaska groundfish fisheries. The intended effect of this action is to conserve and manage the groundfish resource in the Gulf of Alaska in accordance with the Magnuson-Stevens Fishery Conservation and Management Act.

**DATES:** This agency decision is effective on August 25, 2008.

**ADDRESSES:** Copies of Amendment 72 and the Categorical Exclusion for this action may be obtained from the NMFS Alaska Region website at *http://alaskafisheries.noaa.gov/*.

**FOR FURTHER INFORMATION CONTACT:** Jeff Hartman, 907–586–7442.

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce. The Magnuson-Stevens Act also requires that NMFS, upon receiving a fisheries management plan amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment.

The Council submitted Amendment 72 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) to NMFS on May 15, 2008. The notice of availability (NOA) for Amendment 72 was published in the **Federal Register** on May 28, 2008 (73 FR 30598). The public comment period closed on July 28, 2008. NMFS received one public comment and considered this comment in determining whether to approve this FMP amendment. NMFS has summarized and responded to the public comment received in this notice under Response to Public Comments, below.

In April 2003, the Council unanimously recommended Amendment 72 to the GOA FMP. The purpose of Amendment 72 is to annually provide the best available data to the Council on discards of shallow-water flatfish as a percentage of total groundfish catch by area and target fishery. Based on that data, the Council could review the effectiveness of existing Improved Retention/Improved Utilization (IR/IU) regulations for shallow-water flatfish, or consider recommendations to change IR/IU regulations for shallow-water flatfish.

A Categorical Exclusion was prepared for Amendment 72 concluding that the amendment will not result individually or cumulatively in significant impacts on the quality of the human environment (see **ADDRESSES**).

### Response to Public Comments

*Comment 1:* The commenter supports approval of Amendment 72, but notes an error in the NOA. The NOA incorrectly states that the shallow-water flatfish species group in the GOA includes flathead sole, which incorrectly implies that IR/IU requirements in the GOA apply to flathead sole.

*Response:* NMFS agrees. Flathead sole is not included in the shallow-water flatfish species group, is not subject to IR/IU, and would not be included in a shallow-water flatfish discard data report to the Council. No change to the FMP amendment text is necessary because it does not list individual species in the shallow-water flatfish group.

Dated: August 25, 2008.

**James W. Balsiger,**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. E8–20162 Filed 8–28–08; 8:45 am]

BILLING CODE 3510–22–S

# Proposed Rules

Federal Register
Vol. 73, No. 169
Friday, August 29, 2008

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

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

### 9 CFR Part 309

**[Docket No. FSIS–2008–0022]**

**RIN 0583–AD35**

## Requirements for the Disposition of Cattle That Become Non-Ambulatory Disabled Following Ante-Mortem Inspection

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

**ACTION:** Proposed rule.

**SUMMARY:** On May 20, 2008, the Secretary of Agriculture announced that the Food Safety and Inspection Service (FSIS) would begin working on a proposed rule to prohibit the slaughter of all non-ambulatory disabled cattle, without exception. As announced by the Secretary, FSIS is proposing to amend the Federal meat inspection regulations to remove the provision that states that FSIS inspection personnel will determine the disposition of cattle that become non-ambulatory disabled after they have passed ante-mortem inspection on a case-by-case basis. This proposed rule will require that all cattle that are non-ambulatory disabled at the time they are presented for ante-mortem inspection at an official establishment, and all those that become non-ambulatory disabled after passing ante-mortem inspection, be condemned and properly disposed of.

**DATES:** Submit comments on or before September 29, 2008.

**ADDRESSES:** FSIS invites interested persons to submit comments on this proposed rule. Comments may be submitted by either of the following methods:

- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. FSIS prefers to receive comments through the Federal eRulemaking Portal. Go to *http://www.regulations.gov* and, in the ''Search for Open Regulations'' box, select ''Food Safety and Inspection Service'' and ''Proposed Rules'' from the agency drop-down menu and then click on ''Submit.'' In the Docket ID column, select the FDMS Docket Number to submit or view public comments and to view supporting and related materials available electronically. After the close of the comment period, the docket can be viewed using the ''Advanced Search'' function in Regulations.gov.
- *Mail, including floppy disks or CD–ROM's, and hand- or courier-delivered items:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 2534 South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250. All submissions received by mail or electronic mail must include the Agency name and docket number FSIS–2008–0022. Documents referred to in this proposal, and all comments submitted in response to this notice will be available for public inspection in the FSIS Docket room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday. Comments will also be posted on the Agency's Web site at: *http://www.fsis.usda.gov/*.

Individuals who do not wish FSIS to post their personal contact information—mailing address, e-mail, telephone number—on the Internet may leave this information off their comments.

**FOR FURTHER INFORMATION CONTACT:** Dr. Daniel Engeljohn, Deputy Assistant Administrator, Office of Policy and Program Development, FSIS, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–3700, (202) 205–0495.

**SUPPLEMENTARY INFORMATION:**

### Background

On July 13, 2007, FSIS published the final rule, ''Prohibition of the Use of Specified Risk Materials for Human Food and Requirements for the Disposition of Non-Ambulatory Disabled Cattle; Prohibition of the Use of Certain Stunning Devices Used To Immobilize Cattle During Slaughter'' (72 FR 38700). Hereafter in this preamble, that rule will be referred to as the Specified Risk Material (SRM) final rule. The SRM final rule affirmed, with certain amendments, interim regulations implemented by FSIS in 2004 to prevent potential human exposure to the bovine spongiform encephalopathy (BSE) agent (see ''Prohibition of the Use of Specified Risk Materials for Human Food and Requirements for the Disposition of Non-Ambulatory Disabled Cattle'' (69 FR 1862, January 12, 2004)). One of the interim measures that the SRM final rule affirmed was the prohibition of the slaughter of non-ambulatory disabled cattle offered for slaughter for human food (9 CFR 309.3(e)).

Consistent with the interim final rule, the SRM final rule requires that non-ambulatory disabled cattle be condemned on ante-mortem inspection because these animals present a sufficient risk of introducing the BSE agent into the human food supply to render their carcasses ''unfit for human food'' under section 1(m)(3) of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601(m)(3)) (72 FR 38700). In the preamble to the SRM final rule, FSIS also acknowledged that requiring the condemnation of non-ambulatory disabled cattle that are offered for slaughter may be necessary to ensure that these animals are humanely handled in connection with slaughter as required under the Humane Methods of Slaughter Act (HMSA) of 1978 (7 U.S.C. 1901 *et seq.*) (72 FR 38721).

In addition to affirming the requirement that non-ambulatory disabled cattle be condemned on ante-mortem inspection, the SRM final rule amended 9 CFR 309.3(e) to provide that FSIS personnel would determine, on a case-by-case basis, the disposition of cattle that become non-ambulatory disabled after they have passed ante-mortem inspection. The Agency made this revision to codify existing practices formerly described in FSIS Notice 5–04 (''Interim Guidance for Non-Ambulatory Disabled Cattle and Age Determination'') and FSIS Notice 05–06 (''Re-examination of Bovine that become Non-Ambulatory After Passing Ante-mortem Inspection''). These notices instructed FSIS public health veterinarians (PHVs) on the actions they were to take when cattle became non-ambulatory disabled after passing ante-mortem inspection.

Under the current regulations, slaughter establishments are expected to notify inspection personnel when cattle that have passed ante-mortem

inspection subsequently become non-ambulatory disabled before slaughter. If an FSIS PHV can verify that the animal became non-ambulatory disabled because it suffered an acute injury, such as a broken appendage or a severed tendon or ligament, it is tagged as ''U.S. Suspect'' (and is not tagged as ''U.S. Condemned'') and is eligible to proceed to slaughter (9 CFR 309.2). To ensure that non-ambulatory disabled cattle are humanely handled, the regulations require that establishment personnel move the animals to slaughter on equipment suitable for such purposes, or that establishment personnel stun the animals (9 CFR 313.2(d)). FSIS inspection personnel track ''U.S. Suspect'' cattle through the slaughter process for post-mortem (after slaughter) evaluation and reinspection (see FSIS Directive 6100.1, Ante-Mortem Livestock Inspection). If the PHV cannot determine whether the animal became non-ambulatory disabled from a specific injury, the animal is tagged as ''U.S. Condemned'' and is disposed of as provided in 9 CFR 309.13.

All provisions in the SRM final rule, including the prohibition on the slaughter of non-ambulatory disabled cattle, apply to official establishments and custom slaughter operations. As discussed in the preamble to the SRM final rule, although custom slaughter operations are exempt from inspection under section 23(a) of the Federal Meat Inspection Act, the meat and meat food products prepared in custom operations are still subject to the FMIA's adulteration and misbranding provisions (21 U.S.C. 623). Thus, custom operators are prohibited from slaughtering and preparing products from non-ambulatory disabled cattle because the carcasses of these animals are considered unfit for human food (72 FR 38704). In the preamble to the SRM final rule, FSIS noted that FSIS inspectors are not available to determine the disposition of cattle that become non-ambulatory disabled in a custom operation. Therefore, as explained in the SRM final rule preamble, if an animal becomes non-ambulatory disabled from an acute injury after its owner has delivered it to a custom operation for slaughter, the custom operator may slaughter the animal for human food if both the operator and the owner of the animal did not observe any other clinical abnormalities that could be consistent with BSE before the animal sustained the acute injury (72 FR 38704).

**Recent Events—Non-Ambulatory Disabled Cattle**

The SRM final rule allowed a case-by-case reinspection of cattle to address the rare situations where an animal that is deemed by FSIS as fit for human food at ante-mortem inspection subsequently suffers an acute injury. However, a recent significant event highlighted a vulnerability in the inspection system that needs to be addressed. This event indicated that the case-by-case disposition provision in 9 CFR 309.3(e) does not always ensure the proper disposition of cattle that become non-ambulatory disabled after ante-mortem inspection. Establishments may present weakened cattle for slaughter in the hope that such cattle will remain ambulatory long enough to enter the slaughter operation.

Although establishments must notify FSIS inspection program personnel when cattle become acutely injured after ante-mortem inspection so that FSIS inspection personnel can determine the disposition of the cattle, FSIS became aware of an incident in which inspection personnel were not notified. On January 30, 2008, FSIS received allegations regarding the inhumane handling of non-ambulatory disabled cattle at the Hallmark/Westland Meat Packing Company. An investigation into the allegations found evidence that the establishment did not consistently notify FSIS inspection personnel when cattle became non-ambulatory disabled after initial ante-mortem inspection. Instead of notifying FSIS inspectors, the establishment attempted to force animals that had gone down after passing ante-mortem inspection to rise by using electric prods and water sprays. Under the FMIA (21 U.S.C. 603(b)), any cattle that are slaughtered must be handled in accordance with the Humane Methods of Slaughter Act (HMSA) (7 U.S.C. 1901 *et seq.*). Under the meat inspection regulations, establishments are required to handle cattle to minimize excitement, discomfort, or injury (9 CFR 313.2). FSIS found that the establishment had treated the cattle inhumanely.

Also, following the Hallmark/Westland incident, on March 10, 2008, FSIS issued new instructions to inspection personnel concerning humane handling activities. FSIS Notice 16–08 instructs inspection personnel to vary from day-to-day the times during their tour of duty that they verify that animals are being handled and treated humanely. The notice also instructs inspection personnel to encourage establishments to develop and implement a systematic approach for the humane handling of animals.

On April 22, 2008, FSIS received a petition submitted jointly by three meat and dairy industry associations requesting that the Agency amend its regulations to prohibit the case-by-case determination of the status of non-ambulatory disabled cattle that have passed ante-mortem inspection. According to the petition, consumer confidence in the U.S. beef supply has been damaged because the re-inspection of cattle did not occur as required under the current regulations. The petition asserts that the requested amendment is needed to bolster public confidence in the U.S. beef supply. FSIS has also received letters supporting this change to the regulations from an animal welfare organization and members of Congress.

However, FSIS also received five letters, from State meat processors associations and a national meat processors association, opposing the petition. These letters request that the current regulations remain unchanged. The letters state that it is important to have the option for re-inspection of cattle that become non-ambulatory disabled after they have passed ante-mortem inspection to address situations where accidents may occur or animals may become exhausted during the stress of travel.

**Proposed Amendment to 9 CFR 309.3(e)**

FSIS is proposing to remove the provision in 9 CFR 309.3(e) that allows FSIS inspection personnel to determine the disposition of cattle that become non-ambulatory disabled after they have passed ante-mortem inspection on a case-by-case basis. If FSIS finalizes this proposed rule, cattle that become non-ambulatory disabled from an acute injury after ante-mortem inspection will no longer be eligible to proceed to slaughter as ''U.S. Suspects.'' Instead, FSIS inspectors will tag these cattle as ''U.S. condemned'' and prohibit these animals from proceeding to slaughter.

If this proposal is adopted as a final rule, all non-ambulatory disabled cattle would be considered unfit for human food and thus adulterated. Moreover, cattle that become non-ambulatory disabled cattle after ante-mortem inspection will always be condemned. The case-by-case disposition determinations of non-ambulatory disabled cattle by inspection program personnel will be discontinued, increasing the time inspection program personnel can focus on other inspection activities. Because all non-ambulatory disabled cattle would be considered adulterated, FSIS would expect custom

operators not to slaughter cattle that become non-ambulatory disabled after they are delivered to the custom operation.

In addition to proposing that all non-ambulatory disabled cattle be condemned, FSIS is also proposing to require in 9 CFR 309.3(e) that establishments notify FSIS inspection personnel when cattle become non-ambulatory disabled after passing ante-mortem inspection. The Agency is doing so to make clear that establishments have an affirmative obligation to make FSIS personnel aware when an animal goes down. This regulatory requirement should preclude establishments from attempting to force such animals to rise.

FSIS is proposing this rule under 21 U.S.C. 621, which gives FSIS the authority to adopt regulations for the efficient administration of the FMIA. The amendment in this proposal would better ensure effective implementation of ante-mortem inspection pursuant to 21 U.S.C. 603(a) and of humane handling requirements established pursuant to 21 U.S.C. 603(b).

**Executive Order 12988**

This proposed rule has been reviewed under the Executive Order 12988, Civil Justice Reform. Under this proposed rule: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) no retroactive proceedings will be required before parties may file suit in court challenging this rule.

**Executive Order 12866 and the Regulatory Flexibility Act**

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

This proposed rule will require that all cattle that are non-ambulatory disabled at any time prior to slaughter, including those that become non-ambulatory disabled after passing ante-mortem inspection, be condemned and properly disposed of. This rule is necessary to better ensure effective implementation of ante-mortem inspection pursuant to 21 U.S.C. 603(a) and of humane handling requirements established pursuant to 21 U.S.C. 603(b).

**Cost of the Proposed Action**

Under this proposed rule, the beef industry will lose the market value of the non-ambulatory disabled cattle that the establishments could have slaughtered and harvested for human food after the cattle passed the re-inspection. Based on the Agency's 2007 survey data, out of the approximately 33.7 million cattle slaughtered in 2007,[1] FSIS estimates that about 1,300 cattle—about 600 cull cattle (i.e., mostly cows and bulls) and 700 steers and heifers—were in this category.[2] The August 2008 data from the Agricultural Marketing Service (AMS) indicate that the market value for a cull cattle carcass and parts is between $500 and $1,000, and the market value for a steer or heifer carcass and parts is between $900 and $1,100. Therefore, the estimated total market value of the carcasses and parts from cattle that would be condemned under this proposed rule would be in the range of $930,000 to $1,370,000 per year[3]. This estimate is conservative in that it does not take into account the salvage value less the cost for handling and disposal of the condemned carcasses.

Although the above discussion focuses on costs to the beef industry, the industry eventually will pass at least some part of the additional cost to consumers through higher prices or reduced production. This is an indirect cost to the consumers and is difficult to estimate ex-ante without data.

This rule is expected to have an insignificant impact on U.S. trading partners, because the number of animals affected is extremely small, particularly given the existing ban on non-ambulatory disabled cattle and the overall quantity of animals involved in the U.S. beef trade.

**Benefits of the Proposed Rule**

If adopted as a final rule, the proposed amendment would ensure effective implementation of ante-mortem inspection. This action will provide additional efficiencies to food safety inspection by removing the step that requires the inspection workforce to determine whether cattle can be tagged as ''U.S. Suspect'' if those cattle become non-ambulatory disabled after passing ante-mortem inspection. Countries exporting beef to the U.S. would realize the same efficiencies in their inspection programs dedicated to the inspection of beef destined for the U.S. The Agency believes that the total benefits (quantifiable and unquantifiable) of this proposed rule exceed the cost.

**Regulatory Flexibility Analysis**

The FSIS Administrator has made an initial determination that this proposed rule will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). In the Final Regulatory Impact Analysis of SRM final rule[4], the Agency estimated that the rule would possibly affect 3,340 small and very small beef slaughter establishments. This includes 680 federal inspected establishments, 1,346 state inspection establishments, and 1,314 custom exempt facilities. This proposed rule could potentially affect all these establishments because they may have cattle that become non-ambulatory disabled after ante-mortem inspection.

The estimated total annual cost of this proposed rule of $930,000 to $1,370,000 is for the entire beef industry. The Agency estimates that small and very small establishments slaughter about 95% to 98% of the 1,300 downers estimated from the survey. Therefore, the estimated annual cost to the small and very small establishments would be about $883,500 to $1,342,600, which is insignificant compared to the value of their annual production of about $8.4 billion.[5]

**Paperwork Reduction Act**

This proposed rule has been reviewed under the Paperwork Reduction Act and imposes no new paperwork or record-keeping requirements.

**Additional Public Notification**

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of

[1] FSIS Animal Disposition Reporting System (ADRS) database, 2007. Number does not include veal calves or other calves.

[2] To estimate the number of such cattle, FSIS conducted two surveys on the number of cattle that became non-ambulatory after ante-mortem inspection then pased the re-inspection in July through December 2007. One survey focused on establishments that slaughter predominantly cull cattle, and the other focused on ones that slaughter steers and heifers. FSIS extrapolated the 6-month data to annual figures.

[3] The survey did not include custom exempt slaughter. To estimate the number of non-ambulatory disabled cattle in custom exempt slaughter that would likely be affected by this proposed rule, we applied the percentage of such cattle (0.004%) to the total number of custom-exempt slaughter cattle, which is 192,000 annually (data from National Agricultural Statistical Service, USDA and Association of Food and Drug Officials.) The result is about eight cattle per year at all custom slaughter facilities. Since the number is very small, including custom-exempt slaughter is expected to minimally change the analysis.

[4] See Economic Analysis: Final Regulatory Impact Analysis Final Rule, Prohibition of the Use of Specified Risk Materials for Human Food and Requirements for the Disposition of Non-Ambulatory Disabled Cattle Offered for Slaughter, and Prohibition of the Use of Certain Stunning Devices Used to Immobilize Cattle during Slaughter (FSIS Docket No. 03–025F), FSIS/USDA, June 28, 2007. *http://www.fsis.usda.gov/Regulations_&_Policies/2007_Interim_&_Final_Rules_Index/index.asp.*

[5] The value is measured by dressed carcass equivalent, ibid, pp.161–169.

this proposed rule, FSIS will announce it online through the FSIS Web page located at *http://www.fsis.usda.gov/Regulations_&_Policies/2008_Proposed_Rules_Index/index.asp*. FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/*. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

### List of Subjects in 9 CFR Part 309

Ante-Mortem Inspection.

For the reasons discussed in the preamble, FSIS is proposing to amend 9 CFR Chapter III as follows:

## PART 309—ANTE-MORTEM INSPECTION

1. The authority citation for part 309 continues to read as follows:

**Authority:** 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

2. Section 309.3(e) is revised to read as follows:

**§ 309.3 Dead, dying, disabled, or diseased and similar livestock.**

* * * * *

(e) Establishment personnel must notify FSIS inspection personnel when cattle become non-ambulatory disabled after passing ante-mortem inspection. Non-ambulatory disabled cattle that are offered for slaughter must be condemned and disposed of in accordance with § 309.13.

* * * * *

Done at Washington, DC, on August 25, 2008.

**Alfred Almanza,**

*Administrator.*

[FR Doc. E8–20159 Filed 8–28–08; 8:45 am]

BILLING CODE 3410–DM–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2008–0750; Directorate Identifier 2008–NE–21–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Dowty Propellers R175/4–30; R184/4–30–4; R193/4–30–4; R.209/4–40–4.5; R212/4–30–4; R.245/4–40–4.5; R251/4–30–4; R257/4–30–4; and R.259/4–40–4.5 Model Propellers

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to supersede an existing airworthiness directive (AD) for all Dowty Rotol propellers. That AD currently requires, for all Dowty Rotol propellers, visual inspections for seizure and for cadmium plating of the blade pitch change operating links and eyebolt fork assemblies. That AD also requires replacement or heat-treatment of the blade pitch change operating links and eyebolt fork assemblies, if necessary. This proposed AD would require the same actions, but only for certain model Dowty Propellers. This proposed AD results from the FAA determining that AD 70–16–02 does not apply to all propellers, since current Dowty Rotol propellers are differently designed. We are proposing this AD supersedure to specify the affected propeller models, and to prevent seizure or embrittlement and cracking of the blade pitch change operating links and eyebolt fork assemblies, which could result in reduced controllability of the airplane.

**DATES:** We must receive any comments on this proposed AD by October 28, 2008.

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

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

Contact Dowty Propellers, Anson Business Park, Cheltenham Road East, Gloucester GL 29QN, UK; *telephone:* 44 (0) 1452 716000; *fax:* 44 (0) 1452 716001, for the service information identified in this proposed AD.

**FOR FURTHER INFORMATION CONTACT:** Terry Fahr, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: terry.fahr@faa.gov*; telephone (781) 238–7155; fax (781) 238–7170.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2008–0750; Directorate Identifier 2008–NE–21–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

### Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments

received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

## Discussion

The FAA proposes to amend 14 CFR part 39 by superseding AD 70–16–02, Amendment 39–1503 (37 FR 16535, August 16, 1972). That AD requires, for all Dowty Rotol propellers, visual inspections for seizure and for cadmium plating of the blade pitch change operating links and eyebolt fork assemblies. That AD also requires replacement or heat-treatment of the blade pitch change operating links and eyebolt fork assemblies, if necessary. That AD was the result of reports of incorrect and unauthorized cadmium plating of propeller pitch change operating links, link pins, and eyebolt fork assemblies on their case-hardened surfaces. Those conditions, if not corrected, could result in seizure or embrittlement and cracking of blade pitch change operating links and eyebolt fork assemblies, which could result in reduced controllability of the airplane.

## Actions Since AD 70–16–02 Was Issued

Since AD 70–16–02 was issued, we determined that at the time of issuance, the applicability to all Dowty Rotol propellers was accurate. However, other Dowty propeller models which are differently designed have been type certificated since that AD was issued, and are not affected by that AD. This proposed AD would clarify the propeller model applicability by only affecting Dowty Propellers R175/4–30; R184/4–30–4; R193/4–30–4; R.209/4–40–4.5; R212/4–30–4; R.245/4–40–4.5; R251/4–30–4; R257/4–30–4; and R.259/4–40–4.5 model propellers. AD 70–16–02 has a compliance time of within the next 100 hours time-in-service. This proposed AD would require a compliance time of before further flight, as the affected propellers should have already complied with AD 70–16–02.

## Relevant Service Information

We have reviewed and approved the technical contents of Dowty Rotol Service Bulletin (SB) No. 61–754, dated June 12, 1970. That SB describes procedures for heat-treating the blade pitch change operating links and eyebolt fork assemblies.

## FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. For that reason, we are proposing this AD, which would require visual inspections before further flight of the blade pitch change operating links and eyebolt fork assemblies and replacement or heat-treatment of them, if necessary, for Dowty Propellers R175/4–30; R184/4–30–4; R193/4–30–4; R.209/4–40–4.5; R212/4–30–4; R.245/4–40–4.5; R251/4–30–4; R257/4–30–4; and R.259/4–40–4.5 model propellers.

## Costs of Compliance

We anticipate that this proposed AD would affect no propellers installed on airplanes of U.S. registry, as the affected propellers should already be in compliance with AD 70–16–02 since it became effective, on August 21, 1972. Based on this information, we estimate the total cost of the proposed AD to U.S. operators to be $0.

## Authority for This Rulemaking

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

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

## Regulatory Findings

We have determined that this 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 that the proposed AD:*

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration 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 removing Amendment 39–1503 (37 FR 16535, August 16, 1972) and by adding a new airworthiness directive to read as follows:

**Dowty Propellers (Formerly Dowty Aerospace; Dowty Rotol Limited; and Dowty Rotol):** Docket No. FAA–2008–0750; Directorate Identifier 2008–NE–21–AD.

**Comments Due Date**

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by October 28, 2008.

**Affected ADs**

(b) This AD supersedes AD 70–16–02, Amendment 39–1503.

**Applicability**

(c) This AD applies to Dowty Propellers R175/4–30; R184/4–30–4; R193/4–30–4; R.209/4–40–4.5; R212/4–30–4; R.245/4–40–4.5; R251/4–30–4; R257/4–30–4; and R.259/4–40–4.5 model propellers. These propellers are installed on, but not limited to, Fairchild F–27, Fairchild-Hiller FH–227, Grumman G–159, Nihon YS–11, Convair 240, 340, 440, 600, and BAe HS 748 Series 2 airplanes.

**Unsafe Condition**

(d) This AD results from the FAA determining that AD 70–16–02 does not apply to all propellers, since current Dowty Rotol propellers are differently designed. We are issuing this AD supersedure to specify the affected propeller models, and to prevent seizure or embrittlement and cracking of the blade pitch change operating links and eyebolt fork assemblies, which could result in reduced controllability of the airplane.

**Compliance**

(e) You are responsible for having the actions required by this AD performed before further flight after the effective date of this AD, unless the actions have already been done.

(f) Inspect the blade pitch change operating link and eyebolt fork assembly for:

(1) Seizure (the link and eyebolt are seized if the torque required to move the link is 300 inch pounds or more); and

(2) Cadmium plating on the mating surfaces between the operating link and eyebolt fork and the holes through the eyebolt fork and the operating link.

(g) If the link and eyebolt fork are not seized and have not been cadmium plated, they may remain in service.

(h) If the link and eyebolt fork are not seized but cadmium plating is found in the prohibited areas, remove the plating by means of wet or dry silicon carbide paper, fine or medium grade, and conduct a magnetic crack test. If no cracks are found, the assembly may remain in service until the next propeller overhaul for air carrier airplanes and airplanes under a continuous maintenance program or for 3,300 hours time-in-service after the effective date of this AD for all other airplanes. At the next propeller overhaul for air carrier airplanes and airplanes under a continuous maintenance program, or within 3,300 hours time-in-service after the effective date of this AD for all other airplanes, heat treat the links and eyebolt forks found to have been cadmium plated, to remove embrittlement. Use Dowty Rotol Service Bulletin No. 61–754, dated June 12, 1970, to perform the heat treatment.

(i) If the link and eyebolt fork are seized, remove the link and eyebolt fork from service and replace them with an assembly having a part number approved for that model propeller that has not been cadmium plated in the prohibited areas.

(j) If the link or eyebolt fork are found to be cracked during the inspection in paragraph (h) of this AD, remove the cracked part from service and replace it with a part having a part number approved for that model propeller that has not been cadmium plated.

(k) The inspection required by paragraph (f) of this AD need not be performed and the propeller may remain in service if:

(1) The operator can show that no cadmium plating exists in the prohibited areas of that propeller; or

(2) It is a new propeller that has never been overhauled.

**Alternative Methods of Compliance**

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

**Related Information**

(m) Contact Terry Fahr, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: terry.fahr@faa.gov*; telephone (781) 238–7155; fax (781) 238–7170, for more information about this AD.

Issued in Burlington, Massachusetts, on August 22, 2008.

**Carlos Pestana,**

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

[FR Doc. E8–20081 Filed 8–28–08; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2008–0934; Directorate Identifier 2008–NM–113–AD]**

**RIN 2120–AA64**

# Airworthiness Directives; McDonnell Douglas Model DC–9–30, DC–9–40, and DC–9–50 Series Airplanes, Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) Airplanes, and Model MD–88 and MD–90–30 Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for the McDonnell Douglas airplanes listed above. This proposed AD would require modifying the fuel boost pumps for the center wing, and forward or aft auxiliary fuel tanks. This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to prevent possible sources of ignition in a fuel tank caused by an electrical fault or uncommanded dry operation of the fuel boost pumps. An ignition source in the fuel tank could result in a fire or an explosion and consequent loss of the airplane.

**DATES:** We must receive comments on this proposed AD by October 14, 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:** Serj Harutunian, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5254; 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–2008–0934; Directorate Identifier 2008–NM–113–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.

Boeing has determined a need to protect the fuel boost pump stator lead wires from contacting the pump rotor/shaft assembly. Lead wire contact and the resulting chafing may result in an ignition source (energized rotor assembly) being produced in the fuel boost pump inlet that could propagate into the fuel tank when the fuel boost pump inlet is not fully covered by fuel. Replacement of the fuel boost pumps will minimize the risk of potential ignition sources that may occur within the fuel tanks at critical fuel boost pump locations in the center wing, and forward or aft auxiliary fuel tanks. An ignition source in the fuel tank could result in a fire or an explosion and consequent loss of the airplane.

## Relevant Service Information

We have reviewed Boeing Service Bulletins DC9–28–212 (for Model DC–9–30, DC–9–40, and DC–9–50 series airplanes, and Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes) and MD90–28–010, (for MD–90–30 airplanes), both dated February 22, 2008. The service bulletins describe procedures for modifying the fuel boost pumps for the center wing, and forward or aft auxiliary fuel tanks. The modification includes changing or replacing the boost pumps, as applicable. The change includes incorporating a stator lead wire position retention feature.

The Boeing service bulletins recommend concurrent accomplishment of the modification in Argo-Tech Service Bulletin 398000–28–2, dated November 8, 2007. The Argo-Tech Service Bulletin describes procedures for modifying the fuel boost pumps.

## 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 Boeing service information described previously.

## Costs of Compliance

We estimate that this proposed AD would affect 804 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with the modification specified in this proposed AD. The fleet cost is estimated to be between $1,246,200 and $13,087,512.

| Airplane group | Work hours | Average labor rate per hour | Parts | Cost per product |
|---|---|---|---|---|
| Group 1, Configurations 1 and 2 | 1 | $80 | Between $1,470 and $16,038 | Between $1,550 and $16,118. |
| Group 2, Configurations 1 and 2; Group 7, Configuration 2. | 2 | 80 | Between $1,470 and $16,038 | Between $1,630 and $16,198. |
| Group 3, Configurations 1 and 2 | 3 | 80 | Between $1,470 and $16,038 | Between $1,710 and $16,278. |
| Group 4, Configurations 1 and 2 | 1 | 80 | Between $1,470 and $16,038 | Between $1,550 and $16,118. |
| Group 5, Configurations 1 and 2 | 2 | 80 | Between $1,470 and $16,038 | Between $1,630 and $16,198. |
| Group 6, Configurations 1 and 2; Group 8, Configurations 1 and 2. | 1 | 80 | Between $1,470 and $16,038 | Between $1,550 and $16,118. |

## 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–2008–0934; Directorate Identifier 2008–NM–113–AD.

**Comments Due Date**

(a) We must receive comments by October 14, 2008.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to McDonnell Douglas Model DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–32F (C–9A, C–9B), DC–9–33F, DC–9–34, DC–9–34F, DC–9–41, DC–9–51, DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87), MD–88, and MD–90–30 airplanes; certificated in any category; as identified in Boeing Service Bulletins DC9–28–212 and MD90–28–010, both dated February 22, 2008.

**Unsafe Condition**

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent possible sources of ignition in a fuel tank caused by electrical fault or uncommanded dry operation of the fuel boost pumps. An ignition source in the fuel tank could result in a fire or an explosion and consequent loss of the airplane.

**Compliance**

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

**Modification**

(f) Within 60 months after the effective date of this AD: Modify the fuel boost pumps for the center wing, and forward or aft auxiliary fuel tanks, as applicable, by doing all the applicable actions specified in the Accomplishment Instructions of Boeing Service Bulletin DC9–28–212 or MD90–28–010, both dated February 22, 2008, as applicable.

**Prior or Concurrent Action**

(g) Prior to or concurrently with accomplishing the modification required by paragraph (f) of this AD: Do the modification specified in Argo-Tech Service Bulletin 398000–28–2, dated November 8, 2007.

**Alternative Methods of Compliance (AMOCs)**

(h)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, *ATTN:* Serj Harutunian, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5254; 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 August 21, 2008.

**Kevin Hull,**

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

[FR Doc. E8–20082 Filed 8–28–08; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2008–0933; Directorate Identifier 2007–NM–261–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 777 Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to supersede an existing airworthiness directive (AD) that applies to all Boeing Model 777 airplanes. The existing AD requires, for the drive mechanism of the horizontal stabilizer, repetitive detailed inspections for discrepancies, repetitive lubrication of the ballnut and ballscrew, repetitive measurements of the freeplay between the ballnut and the ballscrew, and corrective action if necessary. This proposed AD would revise the compliance times of the existing AD. This proposed AD results from a report of extensive corrosion of a ballscrew in the drive mechanism of the horizontal stabilizer on a Boeing Model 757 airplane, which is similar in design to the ballscrew on Model 777 airplanes. We are proposing this AD to prevent an undetected failure of the primary load path for the ballscrew in the drive mechanism of the horizontal stabilizer and subsequent wear and failure of the secondary load path, which could lead to loss of control of the horizontal stabilizer and consequent loss of control of the airplane.

**DATES:** We must receive comments on this proposed AD by October 14, 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, P.O. Box 3707, Seattle, Washington 98124–2207.

### Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this 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:** Kelly McGuckin, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6490; fax (425) 917–6590.

**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. 2008–0933; Directorate Identifier 2007–NM–261–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**

On August 14, 2007, we issued AD 2007–17–12, amendment 39–15170 (72 FR 49158, August 28, 2007), for all Boeing Model 777 airplanes. That AD requires, for the drive mechanism of the horizontal stabilizer, repetitive detailed inspections for discrepancies, repetitive lubrication of the ballnut and ballscrew, repetitive measurements of the freeplay between the ballnut and the ballscrew, and corrective action if necessary. That AD resulted from a report of extensive corrosion of a ballscrew in the drive mechanism of the horizontal stabilizer on a Boeing Model 757 airplane, which is similar in design to the ballscrew on Model 777 airplanes. We issued that AD to prevent an undetected failure of the primary load path for the ballscrew in the drive mechanism of the horizontal stabilizer and subsequent wear and failure of the secondary load path, which could lead to loss of control of the horizontal stabilizer and consequent loss of control of the airplane.

**Actions Since Existing AD Was Issued**

Since we issued AD 2007–17–12, Boeing submitted a letter asking that we clarify the compliance times specified in that AD. In this letter Boeing states that the wording in the existing AD has resulted in some confusion and may not adequately account for airplanes that have replacement actuators that are new or have been overhauled. Boeing proposes that the AD use the following three different categories for the horizontal stabilizer trim actuator (HSTA):

- HSTA not replaced;
- HSTA replaced with a new or overhauled HSTA; and
- HSTA replaced with a HSTA that was not new or overhauled.

Boeing further states that the existing AD does not account for airplanes receiving a certificate of airworthiness after the effective date of the AD. Boeing suggests that the following changes be made to the existing AD to address the three different categories and revise the compliance times.

Boeing proposes that we make changes to paragraph (g) of AD 2007–17–12 to include subparagraphs (g)(1), (g)(2), and (g)(3) as follows:

> (g) For airplanes that have received a certificate of airworthiness prior to the effective date of this AD: Within 180 days or 3,500 [flight hours] after the effective date of this AD, whichever occurs first, perform a maintenance records check or inspect to determine the status of the horizontal stabilizer trim actuator as follows:
>
> (1) Original horizontal stabilizer trim actuator still installed;
>
> (2) Original horizontal stabilizer trim actuator replaced with a new or overhauled horizontal stabilizer trim actuator;
>
> (3) Original horizontal stabilizer trim actuator replaced with a serviceable horizontal stabilizer trim actuator that was not new or overhauled, and has not received a detailed inspection and freeplay measurement since the replacement conducted per the Service Bulletin identified in paragraph (f) of this AD.

Boeing further suggests that we change paragraphs (h)(1), (h)(2), (i)(1), (i)(2), (j)(1), and (j)(2) of AD 2007–17–12, as follows:

> (1) For airplanes identified in sub-paragraph (g)(1) of this AD and those receiving a certificate of airworthiness on or after the effective date of this AD: Before the accumulation of 15,000 total flight hours or within 18 months after the effective date of this AD, whichever occurs later.
>
> (2) For airplanes identified in sub-paragraph (g)(2) of this AD: Before the accumulation of 15,000 flight hours since replacement of the horizontal stabilizer trim actuator, or within 18 months after the effective date of this AD, whichever occurs later.

Boeing further suggests that we add a new subparagraph (3) to paragraphs (h), (i), and (j) of AD 2007–17–12, as shown:

> (3) For airplanes identified in sub-paragraph (g)(3) of this AD: Before the accumulation of 3,500 flight hours or within 12 months after the effective date of this AD, whichever occurs later.

We agree with Boeing that the compliance times need to be clarified. Therefore, we are proposing this AD, which would supersede AD 2007–17–12, and retain the actions specified in the existing AD but with revisions to paragraphs (g), (h), (i), and (j) to reflect Boeing's suggestions and to clarify the compliance times. This proposed AD also contains new paragraphs (h)(4), (i)(4), and (j)(4) to address airplanes that received an original airworthiness certificate or original export certificate of airworthiness on or after the effective date of this AD.

We have also determined that an additional category is needed to account for airplanes on which the HSTA has been replaced with an actuator that is not new or not overhauled but that has received a detailed inspection and freeplay measurement as described in paragraphs (h) and (i) of this proposed AD since that replacement. Accordingly, we have added paragraph (g)(4) to this proposed AD.

We have also clarified the wording in paragraph (l) of this proposed AD to specify that the credit is for replacement of the HSTA.

**FAA's Determination and Requirements of the Proposed AD**

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 2007–17–12, to retain the actions specified in the existing AD but with new initial inspection compliance times.

**Costs of Compliance**

There are about 596 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 203 airplanes of U.S. registry. The new requirements of this proposed AD add no additional economic burden. The current costs of the existing AD are repeated for the convenience of affected operators, as follows.

The maintenance records check would take about 1 work hour per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the maintenance records check for U.S. operators is $16,240, or $80 per airplane.

The proposed detailed inspection would take about 1 work hour per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the inspection for U.S. operators is $16,240, or $80 per airplane, per inspection cycle.

The proposed freeplay measurement would take about 5 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the freeplay measurement for U.S. operators is $81,200, or $400 per airplane, per measurement cycle.

The proposed required lubrication would take about 1 work hour per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the lubrication for U.S. operators is $16,240, or $80 per airplane, per lubrication cycle.

## Authority for This Rulemaking

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

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

## Regulatory Findings

We have determined that this 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 that the proposed regulation:*

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

## 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 Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–15170 (72 FR 49158, August 28, 2007) and adding the following new airworthiness directive (AD):

**Boeing:** Docket No. FAA–2008–0933; Directorate Identifier 2007–NM–261–AD.

### Comments Due Date

(a) The FAA must receive comments on this AD action by October 14, 2008.

### Affected ADs

(b) This AD supersedes AD 2007–17–12.

### Applicability

(c) This AD applies to all Boeing Model 777 airplanes, certificated in any category.

### Unsafe Condition

(d) This AD results from a report of extensive corrosion of a ballscrew in the drive mechanism of the horizontal stabilizer on a Boeing Model 757 airplane, which is similar in design to the ballscrew on Model 777 airplanes. We are issuing this AD to prevent an undetected failure of the primary load path for the ballscrew in the drive mechanism of the horizontal stabilizer and subsequent wear and failure of the secondary load path, which could lead to loss of control of the horizontal stabilizer and consequent loss of control of the airplane.

### Compliance

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

### Restatement of Requirements of AD 2007–17–12 With Revised Compliance Times

### Service Bulletin Reference

(f) The term ''service bulletin,'' as used in this AD, means Boeing Alert Service Bulletin 777–27A0059, Revision 1, dated August 18, 2005.

**Note 1:** The service bulletin refers to the Boeing 777 Aircraft Maintenance Manual (AMM), Subjects 12–21–05, 27–41–13, and 29–11–00, as additional sources of service information for accomplishing the actions required by this AD.

### Maintenance Records Check

(g) For airplanes that have received an original airworthiness certificate or original export certificate of airworthiness prior to the effective date of this AD: Within 180 days or 3,500 flight hours after the effective date of this AD, whichever occurs first, perform a maintenance records check or inspect to determine the status of the horizontal stabilizer trim actuator (HSTA) as specified in paragraph (g)(1), (g)(2), (g)(3), or (g)(4) of this AD, as applicable:

(1) The original HSTA has been neither replaced nor overhauled;

(2) The original HSTA has been replaced with a new or overhauled HSTA;

(3) The original HSTA has been replaced with a serviceable HSTA that was not new or not overhauled, and which has not received a detailed inspection and freeplay measurement as described in paragraphs (h) and (i) of this AD since that replacement; or

(4) The original HSTA has been replaced with a serviceable HSTA that was not new or not overhauled, and which has received a detailed inspection and freeplay measurement as described in paragraphs (h) and (i) of this AD since that replacement.

### Detailed Inspection

(h) Within the compliance time specified in paragraph (h)(1), (h)(2), (h)(3), or (h)(4) of this AD, as applicable: Perform a detailed inspection for discrepancies of the horizontal stabilizer trim actuator ballnut and ballscrew in accordance with Part 1 of the Accomplishment Instructions of the service bulletin. Repeat the detailed inspection thereafter at intervals not to exceed 3,500 flight hours or 12 months, whichever occurs first. If any discrepancy is found during any inspection required by this AD, before further flight, replace the actuator with a new or serviceable actuator, in accordance with the Accomplishment Instructions of the service bulletin.

(1) For airplanes identified in paragraph (g)(1) of this AD: Before the accumulation of 15,000 total flight hours, or within 18 months after the effective date of this AD, whichever occurs later.

(2) For airplanes identified in paragraph (g)(2) or (g)(4) of this AD: Before the accumulation of 15,000 flight hours since the replacement of the HSTA, or within 18 months after the effective date of this AD, whichever occurs later.

(3) For airplanes identified in paragraph (g)(3) of this AD: Before the accumulation of 3,500 flight hours since the replacement of the HSTA, or within 12 months after the effective date of this AD, whichever occurs later.

(4) For airplanes that have received an original airworthiness certificate or original export certificate of airworthiness on or after the effective date of this AD: Before the accumulation of 15,000 total flight hours, or within 18 months after the issuance of the original airworthiness certificate or original export certificate of airworthiness, whichever occurs later.

### Freeplay Measurement (Inspection)

(i) Within the compliance times specified in paragraphs (i)(1), (i)(2), (i)(3), and (i)(4) of this AD, as applicable: Perform a freeplay measurement of the ballnut and ballscrew in accordance with Part 2 of the Accomplishment Instructions of the service bulletin. Repeat the freeplay measurement thereafter at intervals not to exceed 18,000 flight hours or 60 months, whichever occurs first. If the freeplay is found to exceed the limits specified in the service bulletin during any measurement required by this AD, before further flight, replace the actuator with a new or serviceable actuator in accordance with the Accomplishment Instructions of the service bulletin.

(1) For airplanes identified in paragraph (g)(1) of this AD: Before the accumulation of

15,000 total flight hours, or within 18 months after the effective date of this AD, whichever occurs later.

(2) For airplanes identified in paragraph (g)(2) or (g)(4) of this AD: Before the accumulation of 15,000 flight hours since the replacement of the HSTA, or within 18 months after the effective date of this AD, whichever occurs later.

(3) For airplanes identified in paragraph (g)(3) of this AD: Before the accumulation of 3,500 flight hours since the replacement of the HSTA, or within 12 months after the effective date of this AD, whichever occurs later.

(4) For airplanes that have received an original airworthiness certificate or original export certificate of airworthiness on or after the effective date of this AD: Before the accumulation of 15,000 total flight hours, or within 18 months after the issuance of the original airworthiness certificate or original export certificate of airworthiness, whichever occurs later.

**Lubrication**

(j) Within the compliance times specified in paragraphs (j)(1), (j)(2), (j)(3), and (j)(4) of this AD, as applicable: Lubricate the ballnut and ballscrew in accordance with Part 3 of the Accomplishment Instructions of the service bulletin. Repeat the lubrication thereafter at intervals not to exceed 2,000 flight hours or 12 months, whichever occurs first.

(1) For airplanes identified in paragraph (g)(1) of this AD: Before the accumulation of 15,000 total flight hours, or within 18 months after the effective date of this AD, whichever occurs later.

(2) For airplanes identified in paragraph (g)(2) or (g)(4) of this AD: Before the accumulation of 15,000 flight hours since the replacement of the HSTA, or within 18 months after the effective date of this AD, whichever occurs later.

(3) For airplanes identified in paragraph (g)(3) of this AD: Before the accumulation of 3,500 flight hours since the replacement of the HSTA, or within 12 months after the effective date of this AD, whichever occurs later.

(4) For airplanes that have received an original airworthiness certificate or original export certificate of airworthiness on or after the effective date of this AD: Before the accumulation of 15,000 total flight hours, or within 18 months after the issuance of the original airworthiness certificate or original export certificate of airworthiness, whichever occurs later.

**Credit for Using Original Issue of Service Bulletin**

(k) Actions performed prior to the effective date of this AD, in accordance with Boeing Alert Service Bulletin 777–27A0059, dated September 18, 2003, are considered acceptable for compliance with the corresponding actions specified in paragraphs (h), (i), and (j) of this AD.

**Credit for Hard-Time Replacement of HSTA**

(l) Any HSTA overhauled within the compliance times specified in paragraphs (h), (i), and (j) of this AD or before the effective date of this AD—as part of a ''hard-time'' replacement program that includes removal of the HSTA from the airplane and overhaul of the stabilizer ballscrew in accordance with original equipment manufacturer component maintenance manual instructions—meets the intent of one detailed inspection, one freeplay inspection, and one lubrication of the HSTA. Therefore, any such HSTA is considered acceptable for compliance with the initial accomplishment of the actions specified in paragraphs (h), (i), and (j) of this AD, and repetitions of those actions may be determined from the performance date of that overhaul.

**Parts Installation**

(m) As of the effective date of this AD, no person may install, on any airplane, a horizontal stabilizer trim actuator that is not new or overhauled, unless a detailed inspection, freeplay measurement, and lubrication of that actuator are performed in accordance with paragraphs (h), (i), and (j) of this AD, as applicable.

**Alternative Methods of Compliance (AMOCs)**

(n)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, ATTN: Kelly McGuckin, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 917–6490; fax (425) 917–6590; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

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

Issued in Renton, Washington, on August 21, 2008.

**Kevin Hull,**

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

[FR Doc. E8–20087 Filed 8–28–08; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2007–29255; Directorate Identifier 2007–NM–085–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

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

**ACTION:** Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

**SUMMARY:** We are revising an earlier proposed airworthiness directive (AD) for certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. The original NPRM would have required doing repetitive internal eddy current and detailed inspections to detect cracked stringer tie clips; measuring the fastener spacing and the edge margin if applicable, and doing applicable corrective and related investigative actions. As a temporary alternative to doing the actions described previously, the original NPRM would have required repetitive inspections of the skin and lap joints for cracks and evidence of overload resulting from cracked stringer tie clips, and applicable corrective actions if necessary. The original NPRM resulted from a report of several cracked stringer tie clips. This action revises the original NPRM by including repetitive external eddy current sliding probe inspections of the lap joints for cracks and evidence of overload resulting from cracked stringer tie clips. We are proposing this supplemental NPRM to detect and correct multiple adjacent cracked stringer tie clips and damaged skin and frames, which could lead to the skin and frame structure developing cracks and consequent decompression of the airplane.

**DATES:** We must receive comments on this supplemental NPRM by September 23, 2008.

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

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

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

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this 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:**

Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6447; fax (425) 917–6590.

**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–2007–29255; Directorate Identifier 2007–NM–085–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

We issued a notice of proposed rulemaking (NPRM) (the ''original NPRM'') to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. That original NPRM was published in the **Federal Register** on September 20, 2007 (72 FR 53706). That original NPRM proposed to require doing repetitive internal eddy current and detailed inspections to detect cracked stringer tie clips; measuring the fastener spacing and the edge margin if applicable; and doing applicable corrective and related investigative actions. As a temporary alternative to doing the actions described previously, that original NPRM proposed to require repetitive external general visual inspections of the skin and lap joints for cracks and evidence of overload resulting from cracked stringer tie clips, and applicable corrective actions if necessary.

## Comments

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

### Requests To Revise Grace Period for Accomplishing Inspections A and B

US Airways requests that, for certain airplane configurations, the grace period for accomplishing the initial inspections specified in paragraph (g) of the original NPRM (Inspection A) be extended from 2 years to 4 years. KLM requests that the grace period of Inspection A be extended to 8 years, and that the intervals for accomplishing the temporary alternative inspection specified in paragraph (h) of the original NPRM (Inspection B) be reduced.

US Airways states that it has been successfully inspecting the same area for corrosion and other damage per the Corrosion Prevention and Control Program (CPCP), as required by AD 90–25–01, amendment 39–6789 (55 FR 49263, November 27, 1990). US Airways states that the compliance time should be extended for operators accomplishing the CPCP. US Airways and KLM state extending the compliance time for accomplishing Inspection A would allow operators to better schedule that inspection, and thus would limit the economic impact. US Airways also states that temporary alternative inspections specified in paragraph (h) of the original NPRM (Inspection B) are not as desirable as Inspection A. US Airways believes Inspection B would increase the risk of damage to airplanes due to operators' need to use various lift equipment to reach the inspection area.

We do not agree with the commenters' request to extend the compliance time specified in paragraph (g) of the supplemental NPRM (Inspection A) or to reduce the compliance time specified in paragraph (h) of the supplemental NPRM (Inspection B). We have determined that the visual inspections required by AD 90–25–01 do not detect multiple adjacent cracks at stringer tie clips, which is the identified unsafe condition of this supplemental NPRM. The CPCP inspections cited do not focus on the areas of affected stringer tie clips. In developing an appropriate compliance time for this supplemental NPRM, we considered not only the degree of urgency associated with addressing the identified unsafe condition, but the practical aspect of incorporating the proposed inspections into affected operators' maintenance schedules in a timely manner. Further, deferral of Inspection A for multiple clip failures does not provide an acceptable level of safety. In light of these items, we have determined that the applicable compliance times identified in paragraphs (g) and (h) of the supplemental NPRM are appropriate. However, paragraph (o) of the supplemental NPRM provides affected operators the opportunity to apply for an adjustment of the compliance time if the operator also presents data that justify the adjustment.

### Requests To Clarify Inspection B

The Air Transport Association (ATA), on behalf of one of its members, United Airlines, and Boeing request that paragraph (h) of the NPRM be clarified as to which affected airplanes the temporary alternative inspections specified in paragraph (h) of the original NPRM (Inspection B) may be done on. The commenters state that a note in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1268, dated August 25, 2006 (referred to as the appropriate source of service information for doing the proposed actions), limits Inspection B to airplanes having stringer tie clips replaced in accordance with Boeing Service Bulletin 737–53–1085, Revision 1, dated May 10, 1990. The commenters note that the AD does not have such a limitation.

We agree with the commenters that clarification is necessary. Paragraph (h) of the supplemental NPRM specifies to do all ''applicable'' actions in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1268. As noted by the commenters, a note in the Accomplishment Instructions states, ''The Option B Inspection is not allowed on airplanes that have not accomplished terminating action of replacing the stringer tie clips as given in Service Bulletin 737–53–1085.'' However, the note does not explain that Boeing Service Bulletin 737–53–1085 affects only airplanes having line numbers 1 through 1000 inclusive. Without such an explanation, operators could misinterpret that paragraph (h) of the supplemental NPRM may be done on airplanes having line numbers 1001 and subsequent, which are also subject to the proposed actions of this supplemental NPRM. Therefore, we have added Note 3 to this supplemental NPRM to clarify this point.

Boeing also requests that the first sentence of paragraph (h) of the NPRM be revised to include eddy current inspections of the lap joints. Boeing states that, for Inspection B, Boeing Special Attention Service Bulletin 737–53–1268 specifies eddy current inspections of the lap joints.

We agree. It was our intent that the proposed inspections align with those specified in Boeing Special Attention Service Bulletin 737–53–1268. Therefore, we have revised paragraph (h) of the supplemental NPRM accordingly.

**Request To Clarify Unsafe Condition**

Boeing requests that, for clarification purposes, the unsafe condition throughout the original NPRM be revised from ''* * * multiple cracked stringer tie clips * * *.'' to ''* * * multiple adjacent cracked stringer tie clips * * *.'' Boeing states that the safety concern is when there are multiple ''adjacent'' stringer tie clips (three or more) that are cracked.

We agree and have revised the supplemental NPRM accordingly.

**Request To Clarify Relevant Service Information Section**

Boeing requests several editorial changes to the Relevant Service Information section of the original NPRM for clarification purposes.

We partially agree. We acknowledge that Boeing's suggested changes to that section would further clarify the information specified in the service bulletin. However, the Relevant Service Information section of the original NRPM does not reappear in the supplemental NPRM. Therefore, we have made no change to this supplemental NPRM in this regard.

**Request To Revise Work-Hour Estimate**

Boeing requests that the work hours for Inspection A in the Costs of Compliance section of the original NPRM be revised from between 40 and 103 to between 253 and 307. Boeing states that Inspection A requires internal access, which requires many more hours than that shown in the Estimated Costs table.

We do not agree. The Costs of Compliance section describes only the direct costs of the specific actions proposed by this supplemental NPRM. The estimated work hours represent the time necessary to perform only the actions actually proposed by this supplemental NPRM. We recognize that, in doing the actions required by an AD, operators might incur incidental costs in addition to the direct costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs such as the time required to gain access and close up, time necessary for planning, or time necessitated by other administrative actions. Those incidental costs, which might vary significantly among operators, are almost impossible to calculate. Therefore, we have made no change to the supplemental NPRM in this regard.

**Clarification of Unsafe Condition**

The Summary section and paragraph (d) of the NPRM state, ''We are proposing this supplemental NPRM to prevent multiple cracked stringer tie clips and damaged skin and frames * * *'' For clarification purposes, we have changed the phrase ''to prevent'' to ''to detect and correct'' in that section and paragraph of this supplemental NPRM.

**FAA's Determination and Proposed Requirements of the Supplemental NPRM**

We are proposing this supplemental NPRM because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design. Certain changes described above expand the scope of the original NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this supplemental NPRM.

**Costs of Compliance**

We estimate that this proposed AD would affect 787 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

| Action | Work hours [1] | Average labor rate per hour | Cost per airplane [1] | Number of U.S.-registered airplanes | Fleet cost [1] |
|---|---|---|---|---|---|
| Inspection A | Between 40 and 103 | $80 | Between $3,200 and $8,240, per inspection cycle. | 787 | Between $2,518,400 and $6,484,880, per inspection cycle. |
| Inspection B (temporary alternative to Inspection A). | Between 2 and 109 | 80 | Between $160 and $8,720 | 787 | Between $125,920 and $6,862,640, per inspection cycle. |

[1] Depending on the airplane configuration.

**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:

**Boeing:** Docket No. FAA–2007–29255; Directorate Identifier 2007–NM–085–AD.

**Comments Due Date**

(a) We must receive comments by September 23, 2008.

**Affected ADs**

(b) AD 93–08–04, amendment 39–8551.

**Applicability**

(c) This AD applies to Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category; as identified in Boeing Special Attention Service Bulletin 737–53–1268, dated August 25, 2006.

**Unsafe Condition**

(d) This AD results from a report of several cracked stringer tie clips. We are issuing this AD to detect and correct multiple adjacent cracked stringer tie clips and damaged skin and frames, which could lead to the skin and frame structure developing cracks and consequent decompression of the airplane.

**Compliance**

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

**Service Bulletin References**

(f) The term ''the service bulletin,'' as used in this AD, means the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1268, dated August 25, 2006.

**Inspection A: Required Internal Inspections, Applicable Corrective and Related Investigative Actions, and Measurement**

(g) Do repetitive internal eddy current and detailed inspections to detect cracked stringer tie clips; measure the fastener spacing and the edge margin if applicable; and do applicable corrective and related investigative actions. Do all applicable actions at the applicable compliance times and repeat intervals identified in Tables 2 through 8 inclusive of paragraph 1.E., ''Compliance,'' of the service bulletin; except as provided by paragraphs (i) through (l) of this AD. Do all applicable actions in accordance with the Accomplishment Instructions of the service bulletin, except as provided by paragraph (m) of this AD.

**Note 1:** The service bulletin refers to Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001, as an additional source of service information for doing an internal eddy current inspection of the lap joint for certain airplane configurations.

**Inspection B: Temporary Alternative External Inspections and Corrective Actions**

(h) As a temporary alternative to doing the actions required by paragraph (g) of this AD, do repetitive external general visual inspections of the skin and lap joints and repetitive external eddy current sliding probe inspections of the lap joints for cracks and evidence of overload resulting from cracked stringer tie clips, and applicable corrective actions if necessary. Do all applicable actions at the applicable compliance times and repeat intervals identified in Tables 9 through 12 inclusive of paragraph 1.E., ''Compliance,'' of the service bulletin, but not to exceed the flight cycles in the ''Inspection Period Allowed'' column of the tables; except as provided by paragraphs (i) and (l) of this AD. Do all applicable actions in accordance with the Accomplishment Instructions of the service bulletin, except as provided by paragraph (m) of this AD.

**Note 2:** The eddy current inspection along the stringer tie clip radius to detect damage and replacement, as applicable, specified in paragraph 3.B.5. of the Accomplishment Instructions of the service bulletin are not required by this AD. The actions are optional and can be done in addition to and at the same time as the actions required by paragraph (g) of this AD.

**Note 3:** Inspection B may be used on affected airplanes having line numbers 1 through 1000 inclusive on which the terminating action (i.e., replacement of stringer tie clips) specified in Boeing Service Bulletin 737–53–1085, Revision 1, dated May 10, 1990, has been done; and on affected airplanes having line numbers 1001 and subsequent. The service bulletin contains a similar note.

**Exceptions to Service Information**

(i) Where the service bulletin specifies a compliance time after the date of the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

(j) For Model 737–100, –200, and –200C series airplanes, on which Boeing Service Bulletin 737–53–1085, Revision 1, dated May 10, 1990, has not been done in accordance with AD 93–08–04: As of the effective date of this AD, do the applicable inspections from station (STA) 559 to STA 887 in accordance with paragraph (g) of this AD, at the applicable compliance times specified in paragraph (b) of AD 93–08–04.

(k) In the first row of Tables 5 and 6 of paragraph 1.E., ''Compliance,'' of the service bulletin, where the service bulletin specifies a compliance time of before 25,000 total airplane flight cycles, this AD requires a compliance time of before the accumulation of 25,000 total flight cycles, or within 2 years after the effective date of this AD, whichever occurs later.

(l) Where the service bulletin specifies no starting point (e.g., ''after the date on the service bulletin'') for a grace period, this AD requires compliance within the specified grace period after the effective date of this AD.

(m) Where the service bulletin specifies to contact Boeing for appropriate action: Before further flight, repair the discrepancy using a method approved in accordance with the procedures specified in paragraph (o) of this AD.

**Certain Actions End Certain Requirements of AD 93–08–04**

(n) Accomplishment of the internal eddy current and detailed inspections for STA 559 to STA 887 in accordance with paragraph (g) of this AD constitutes compliance with the inspections required by paragraph (a) of AD 93–08–04, as it pertains to Boeing Service Bulletin 737–53–1085, Revision 1, dated May 10, 1990. Accomplishment of the internal eddy current and detailed inspections does not terminate the remaining requirements of AD 93–08–04, as it applies to other service bulletins. Operators are required to continue to inspect and/or modify per the other service bulletins listed in that AD.

**Alternative Methods of Compliance (AMOCs)**

(o)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, ATTN: Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6447; fax (425) 917–6590; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Issued in Renton, Washington, on August 20, 2008.

**Kevin Hull,**

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

[FR Doc. E8–20102 Filed 8–28–08; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. FAA–2008–0115; Directorate Identifier 2007–NM–240–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Saab Model SAAB 2000 Airplanes

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

**ACTION:** Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

**SUMMARY:** We are revising an earlier NPRM for the products listed above. This action revises the earlier NPRM by expanding the scope. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

One Part Number (P/N) LM–219–92 Centre Bracket from a P/N LM–219-SA28 Aft Engine Mounting assembly was found to be cracked while installed on the aircraft.

This reduces the effectiveness of the mounting assembly and could eventually cause it to fail.

* * * * *

A failed mounting assembly, if not corrected, could result in loss of the engine. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** We must receive comments on this proposed AD by September 23, 2008.

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

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

### Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1112; fax (425) 227–1149.

**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–2008–0115; Directorate Identifier 2007–NM–240–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

### Discussion

We proposed to amend 14 CFR part 39 with an earlier NPRM for the specified products, which was published in the **Federal Register** on February 5, 2008 (73 FR 6640). That earlier NPRM proposed to require actions intended to address the unsafe condition for the products listed above.

Since that NPRM was issued, the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2008–0068, dated April 11, 2008 (referred to after this as ''the MCAI''). The MCAI states:

One Part Number (P/N) LM–219–92 Centre Bracket from a P/N LM–219–SA28 Aft Engine Mounting assembly was found to be cracked while installed on the aircraft.

This reduces the effectiveness of the mounting assembly and could eventually cause it to fail.

EASA Airworthiness Directive (AD) was issued to require inspection and rework in order to make the centre bracket less sensitive to external damage that may result in a crack.

This AD, superseding AD 2007–0204, has been issued to introduce an alternative repeatable inspection procedure.

A failed mounting assembly, if not corrected, could result in loss of the engine. The corrective actions include an inspection to determine if there are any sharp edges on the aft engine mounting assembly; repetitive visual inspections, or a combination of visual and fluorescent penetrant inspection, for cracking of the center bracket of the aft engine mounting assembly for both engines; rework of sharp edges; replacement of the aft engine mounting assemblies; and re-identification of engine mounting assemblies and reworked center bracket. You may obtain further information by examining the MCAI in the AD docket.

### Relevant Service Information

Saab has issued Saab Service Bulletin 2000–71–025, dated June 13, 2007, and Saab Service Bulletin 2000–71–023, Revision 01, dated June 13, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

### Comments

We have considered the following comments received on the earlier NPRM.

### Requests To Change Unsafe Condition

Rolls-Royce Corporation and Saab Aerosystems point out that the unsafe condition is stated incorrectly in the earlier NPRM. The unsafe condition in the earlier NPRM says ''a failed mounting assembly, if not corrected, could result in loss of the engine.'' The commenters state that the engine mounting assembly is designed as a redundant, multiple point mounting system and, in case of loss of one mount, the loads are transferred through the remaining mounts. Therefore, the mounting system is capable of flight with one mounting assembly completely inoperative, though the failure increases the load applied to the other mounting assemblies. Rolls-Royce states that Saab issued Service Bulletin 2000–71–025 (which we cited in the earlier NPRM) to ensure that the system redundancies are maintained.

We disagree with the request to change the wording of the unsafe condition. In an unsafe condition we define the end-level effect that condition could have on. In this case, a failed mounting assembly could compromise safety as the first in a

potential chain of events that could result in loss of the engine. The unsafe condition emphasizes only the potential result by saying a failed mounting assembly could result in loss of the engine rather than saying it will result in loss of the engine. We have not changed the supplemental NPRM in this regard.

**Request To Revise Difference Regarding Continued Flight With Cracks**

Rolls-Royce and Saab also state that the ''Differences'' section in the NPRM incorrectly implies that Saab Service Bulletin 2000–71–025, and European Aviation Safety Agency (EASA) Airworthiness Directive 2007–0204, dated August 8, 2007, allow continued flight if a cracked center bracket is found. The commenters state that if any crack is found, the mounting assembly should be replaced before further flight.

When we evaluated the original EASA airworthiness directive, we found that it states that corrective actions are to be applied within 4,000 flight hours after its effective date. Because the EASA airworthiness directive does not specify that corrective actions are to be completed before further flight after the visual inspection, this means that operators can wait 4,000 flight hours to do the replacement, even though the inspection was required within 1,000 flight hours after the effective date. The service bulletin states that ''If any cracks are found, replace the Aft Engine Mounting Assembly,'' but does not give a specific time for doing that replacement. Therefore, we concluded that both documents can be interpreted to allow further flight with cracks. We also note that EASA Airworthiness Directive 2008–0068 maintains this same wording. Therefore, we have not changed the supplemental NPRM in this regard.

**Statement of New Service Information**

Saab states that it is working jointly with Rolls-Royce to develop an alternative means of compliance to the current non-destructive test (NDT) inspection specified in Saab Service Bulletin 2000–71–025. The proposed revision has been submitted to EASA and will most probably result in EASA issuing a revised airworthiness directive.

As stated earlier, EASA has issued Airworthiness Directive 2008–0068, and we have revised this supplemental NPRM accordingly. However, this supplemental NPRM still refers to Saab Service Bulletin 2000–71–025 because the service bulletin has not been revised. This supplemental NPRM also now refers to Saab Service Bulletin 2000–71–023, Revision 01 as an acceptable source of service information for doing certain actions. Once new service information is developed, approved, and available, we might consider additional rulemaking. We have not changed the AD in this regard.

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

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

Certain changes described above expand the scope of the earlier NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this proposed AD.

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

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

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

**Costs of Compliance**

Based on the service information, we estimate that this proposed AD would affect about 6 products of U.S. registry. We also estimate that it would take about 8 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $3,840, or $640 per product.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

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

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

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Saab Aircraft AB:** Docket No. FAA–2008–0115; Directorate Identifier 2007–NM–240–AD.

**Comments Due Date**

(a) We must receive comments by September 23, 2008.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Saab Model SAAB 2000 airplanes, certificated in any category, serial number 004 through 063.

**Subject**

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

**Reason**

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

One Part Number (P/N) LM–219–92 Centre Bracket from a P/N LM–219–SA28 Aft Engine Mounting assembly was found to be cracked while installed on the aircraft.

This reduces the effectiveness of the mounting assembly and could eventually cause it to fail.

EASA Airworthiness Directive (AD) was issued to require inspection and rework in order to make the centre bracket less sensitive to external damage that may result in a crack.

This AD, superseding AD 2007–0204, has been issued to introduce an alternative repeatable inspection procedure.

A failed mounting assembly, if not corrected, could result in loss of the engine. The corrective actions include an inspection to determine if there are any sharp edges on the aft engine mounting assembly; repetitive visual inspections, or a combination of visual and fluorescent penetrant inspection, for cracking of the center bracket of the aft engine mounting assembly for both engines; rework of sharp edges; replacement of the aft engine mounting assemblies; and re-identification of engine mounting assemblies and reworked center bracket.

**Actions and Compliance**

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

(1) Within 1,000 flight hours after the effective date of this AD, do visual inspections of both the aft engine mounting assemblies to find if the center bracket is correct (no sharp edges) from the manufacturer.

(2) If no sharp edge is found during the inspection required by paragraph (f)(1) of this AD, before further flight, inspect to determine if the aft engine mounting assembly and center bracket are identified with a ''–1'' and before further flight re-identify the parts that are not identified with a ''–1'' in accordance with the Accomplishment Instructions of Saab Service Bulletin 2000–71–025, dated June 13, 2007. Following the re-identification, no further action is required by this AD for airplanes on which no sharp edge is found during the inspection required by paragraph (f)(1) of this AD.

(3) If any sharp edge is found during the inspection required by paragraph (f)(1) of this AD, before further flight, do the action in paragraph (f)(3)(i) or (f)(3)(ii) of this AD in accordance with the Accomplishment Instructions of Saab Service Bulletin 2000–71–025, dated June 13, 2007.

(i) Do a general visual inspection for cracking of the center bracket of both of the aft engine mounting assemblies, with the bracket on the wing, and repeat the inspection thereafter at intervals not to exceed 250 flight hours until the action required by paragraph (f)(4) of this AD is accomplished.

(ii) Do general visual and penetrant inspections for cracking of the center bracket of both of the aft engine mounting assemblies, with the bracket off the wing.

**Note 1:** For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(4) At the applicable time in paragraph (f)(4)(i) or (f)(4)(ii) of this AD, do the applicable actions in those paragraphs in accordance with the Accomplishment Instructions of Saab Service Bulletin 2000–71–025, dated June 13, 2007. Doing the applicable action terminates the repetitive inspection requirements of paragraph (f)(3)(i) of this AD.

(i) If no cracking is found during any inspection required by paragraph (f)(3) of this AD: Within 4,000 flight hours after the effective date of this AD, rework the center bracket, and re-identify the aft engine mounting assembly and center bracket.

(ii) If any cracking is found during any inspection required by paragraph (f)(3) of this AD, before further flight, replace the aft engine mounting assembly with an assembly and bracket identified with a ''–1'' part number.

(5) Actions done before the effective date of this AD in accordance with Saab Service Bulletin 2000–71–023, Revision 01, dated June 13, 2007, are acceptable for compliance with the corresponding requirements of paragraph (f)(3) of this AD.

**FAA AD Differences**

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

(1) Although the MCAI or service information allows further flight after cracks are found during compliance with the required action, paragraph (f)(4) of this AD requires that you replace a cracked aft engine mounting assembly before further flight.

**Other FAA AD Provisions**

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1112; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

**Related Information**

(h) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2008–0068, dated April 11, 2008, and Saab Service Bulletin 2000–71–025, dated June 13, 2007, for related information.

Issued in Renton, Washington, on August 20, 2008.

**Kevin Hull,**

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

[FR Doc. E8–20088 Filed 8–28–08; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. FAA–2008–0123; Directorate Identifier 2007–NM–056–AD]**

**RIN 2120–AA64**

# Airworthiness Directives; McDonnell Douglas Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 Airplanes; Model DC–8–51, DC–8–52, DC–8–53, and DC–8–55 Airplanes; Model DC–8F–54 and DC–8F–55 Airplanes; Model DC–8–61, DC–8–62, and DC–8–63 Airplanes; Model DC–8–61F, DC–8–62F, and DC–8–63F Airplanes; Model DC–8–71, DC–8–72, and DC–8–73 Airplanes; and Model DC–8–71F, DC–8–72F, and DC–8–73F Airplanes

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

**ACTION:** Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

**SUMMARY:** The FAA is revising an earlier NPRM for an airworthiness directive (AD) that applies to all McDonnell Douglas Model DC–8 airplanes. The original NPRM would have superseded an existing AD that currently requires, among other things, revision of an existing program of structural inspections. The original NPRM proposed to require implementation of a revised program of structural inspections of baseline structure to detect and correct fatigue cracking in order to ensure the continued airworthiness of these airplanes as they approach the manufacturer's original fatigue design life goal. The original NPRM resulted from a significant number of these airplanes approaching or exceeding the design service goal on which the initial type certification approval was predicated. This new action revises the original NPRM by reducing the inspection threshold for certain principal structural elements. We are proposing this supplemental NPRM to detect and correct fatigue cracking that could compromise the structural integrity of these airplanes.

**DATES:** We must receive comments on this supplemental NPRM by September 23, 2008.

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

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

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:** Dara Albouyeh, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5222; 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–2008–0123; Directorate Identifier 2007–NM–056–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

We proposed to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) with a notice of proposed rulemaking (NPRM) for an AD (the ''original NPRM'') to supersede AD 93–01–15, amendment 39–8469 (58 FR 5576, January 22, 1993). The original NPRM applied to all McDonnell Douglas Model DC–8 airplanes. The original NPRM was published in the **Federal Register** on February 5, 2008 (73 FR 6622). The original NPRM proposed to retain certain requirements of AD 93–01–15. The original NPRM also proposed to require a revision of the FAA-approved maintenance program. In addition, the original NPRM proposed to require implementation of a revised structural inspection program of baseline structure to detect and correct fatigue cracking in order to ensure the continued airworthiness of airplanes as they approach the manufacturer's original fatigue design life goal.

## Actions Since Original NPRM Was Issued

Since we issued the original NPRM, we have reviewed Boeing Report No. L26–011, ''DC–8 All Series Supplemental Inspection Document (SID),'' Volume I, Revision 7, dated March 2008 (hereafter ''Revision 7''). The procedures specified in Revision 7 are identical to those specified in Boeing Report No. L26–011, ''DC–8 All Series Supplemental Inspection Document (SID),'' Volume I, Revision 6, dated July 2005 (referred to in the NPRM as the appropriate source of service information for accomplishing certain required actions). Revision 7 revises the inspection threshold for certain principal structural elements from landings to flight hours, which reduces the inspection threshold. Therefore, we have revised the supplemental NPRM to refer to Revision 7 as the appropriate source of service information for accomplishing certain proposed actions.

## FAA's Determination and Proposed Requirements of the Supplemental NPRM

The change discussed above expands the scope of the original NPRM; therefore, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment on this supplemental NPRM.

## Costs of Compliance

There are about 194 airplanes of the affected design in the worldwide fleet. The following table provides the

estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

| Action | Work hours | Average labor rate per hour | Cost per operator | Number of U.S.-registered airplanes | Fleet cost |
|---|---|---|---|---|---|
| Revision of maintenance inspection program (required by AD 93–01–15). | 544 per operator (17 U.S. operators). | $80 | $43,520, per operator ..... | 131 | $739,840 |
| Revision of maintenance program and inspections (new proposed actions). | 250 per operator (17 U.S. operators). | 80 | $20,000 ..... | 131 | 340,000 |

The number of inspection work hours, as indicated above, is presented as if the accomplishment of the actions in this proposed AD is to be conducted as ''stand alone'' actions. However, in actual practice, these actions for the most part will be done coincidentally or in combination with normally scheduled airplane inspections and other maintenance program tasks. Therefore, the actual number of necessary additional inspection work hours will be minimal in many instances. Additionally, any costs associated with special airplane scheduling will be minimal.

## Authority for This Rulemaking

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

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

## Regulatory Findings

We have determined that this 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 that the proposed regulation:*

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this supplemental NPRM and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

## 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 Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–8469 (58 FR 5576, January 22, 1993) and adding the following new airworthiness directive (AD):

**McDonnell Douglas**: Docket No. FAA–2008–0123; Directorate Identifier 2007–NM–056–AD.

### Comments Due Date

(a) The FAA must receive comments on this AD action by September 23, 2008.

### Affected ADs

(b) This AD supersedes AD 93–01–15.

### Applicability

(c) This AD applies to all McDonnell Douglas airplanes identified in Table 1 of this AD, certificated in any category.

TABLE 1—APPLICABILITY

| | Model |
|---|---|
| (1) | DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 airplanes. |
| (2) | DC–8–51, DC–8–52, DC–8–53, and DC–8–55 airplanes. |
| (3) | DC–8F–54 and DC–8F–55 airplanes. |
| (4) | DC–8–61, DC–8–62, and DC–8–63 airplanes. |
| (5) | DC–8–61F, DC–8–62F, and DC–8–63F airplanes. |
| (6) | DC–8–71, DC–8–72, and DC–8–73 airplanes. |
| (7) | DC–8–71F, DC–8–72F, and DC–8–73F airplanes. |

### Unsafe Condition

(d) This AD results from a significant number of these airplanes approaching or exceeding the design service goal on which the initial type certification approval was predicated. We are issuing this AD to detect and correct fatigue cracking that could compromise the structural integrity of these airplanes.

### Compliance

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

*Certain Requirements of AD 93–01–15:*

### Revise the FAA-Approved Maintenance Inspection Program

(f) Within 6 months after February 26, 1993 (the effective date of AD 93–01–15), incorporate a revision of the FAA-approved maintenance inspection program that provides no less than the required inspection of the Principal Structural Elements (PSEs) defined in Sections 2 and 3 of Volume I of McDonnell Douglas Report No. L26–011, ''DC–8 Supplemental Inspection Document (SID),'' dated March 1991, in accordance with Section 2 of Volume III–91, dated April 1991, of that document. The non-destructive inspection techniques set forth in Sections 2 and 3 of Volume II, dated March 1991, of that SID provide acceptable methods for

accomplishing the inspections required by this AD. All inspection results, negative or positive, must be reported to McDonnell Douglas, in accordance with the instructions of Section 2 of Volume III–91 of the SID. Information collection requirements contained in this regulation have been approved by the OMB under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

**Corrective Action**

(g) Cracked structure detected during the inspections required by paragraph (f) of this AD must be repaired before further flight, in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

**New Requirements of this AD**

**Revision of the Maintenance Inspection Program**

(h) Within 12 months after the effective date of this AD, incorporate a revision of the FAA-approved maintenance inspection program that provides for inspection(s) of the PSEs, in accordance with Boeing Report No. L26–011, ''DC–8 All Series Supplemental Inspection Document (SID),'' Volume I, Revision 7, dated March 2008. Incorporation of this revision ends the requirements of paragraphs (f) and (g) of this AD.

**Non-Destructive Inspections (NDIs)**

(i) For all PSEs listed in Section 2 of Boeing Report No. L26–011, ''DC–8 All Series Supplemental Inspection Document (SID),'' Volume I, Revision 7, dated March 2008, perform an NDI for fatigue cracking of each PSE, in accordance with the NDI procedures specified in Section 2 of McDonnell Douglas Report No. L26–011, ''DC–8 Supplemental Inspection Document (SID),'' Volume II, Revision 8, dated January 2005, at the times specified in paragraph (i)(1), (i)(2), or (i)(3) of this AD, as applicable.

(1) For airplanes that have less than three quarters of the fatigue life threshold ($\frac{3}{4}N_{TH}$) as of the effective date of this AD: Perform the NDI for fatigue cracking at the times specified in paragraphs (i)(1)(i) and (i)(1)(ii) of this AD. After reaching the threshold ($N_{TH}$), repeat the inspection for that PSE at intervals not to exceed ΔNDI/2.

(i) Perform an initial NDI no earlier than one-half of the threshold ($\frac{1}{2}N_{TH}$) but before reaching three-quarters of the threshold ($\frac{3}{4}N_{TH}$), or within 60 months after the effective date of this AD, whichever occurs later.

(ii) Repeat the NDI no earlier than $\frac{3}{4}N_{TH}$ but before reaching the threshold ($N_{TH}$), or within 18 months after the inspection required by paragraph (i)(1)(i) of this AD, whichever occurs later.

**Note 1:** The DC–8 SID and this AD refer to the repetitive inspection interval as ΔNDI/2. However, the headings of the tables in Section 4 of Volume I of the DC–8 SID refer to the repetitive inspection interval of NDI/2. The values listed under NDI/2 in the tables in Section 4 of Volume I of the DC–8 SID are the repetitive inspection intervals, ΔNDI/2.

(2) For airplanes that have reached or exceeded three-quarters of the fatigue life threshold ($\frac{3}{4}N_{TH}$), but less than the threshold ($N_{TH}$), as of the effective date of this AD: Perform an NDI before reaching the threshold ($N_{TH}$), or within 18 months after the effective date of this AD, whichever occurs later. Thereafter, after passing the threshold ($N_{TH}$), repeat the inspection for that PSE at intervals not to exceed ΔNDI/2.

(3) For airplanes that have reached or exceeded the fatigue life threshold ($N_{TH}$) as of the effective date of this AD: Perform an NDI within 18 months after the effective date of this AD. Thereafter, repeat the inspection for that PSE at intervals not to exceed ΔNDI/2.

**Discrepant Findings**

(j) If any discrepancy (e.g., differences on the airplane from the NDI reference standard, such as PSEs that cannot be inspected as specified in McDonnell Douglas Report No. L26–011, ''DC–8 Supplemental Inspection Document (SID),'' Volume II, Revision 8, dated January 2005, or do not match rework, repair, or modification descriptions in Boeing Report No. L26–011, ''DC–8 All Series Supplemental Inspection Document (SID),'' Volume I, Revision 7, dated March 2008) is detected during any inspection required by paragraph (i) of this AD, do the action specified in paragraph (j)(1) or (j)(2) of this AD, as applicable.

(1) If a discrepancy is detected during any inspection done before $\frac{3}{4}N_{TH}$ or $N_{TH}$: The area of the PSE affected by the discrepancy must be inspected before $N_{TH}$ or within 18 months after the discovery of the discrepancy, whichever occurs later, in accordance with a method approved by the Manager, Los Angeles ACO.

(2) If a discrepancy is detected during any inspection done after $N_{TH}$: The area of the PSE affected by the discrepancy must be inspected before the accumulation of an additional ΔNDI/2 or within 18 months after the discovery of the discrepancy, whichever occurs later, in accordance with a method approved by the Manager, Los Angeles ACO.

**Reporting Requirements**

(k) All negative or positive findings of the inspections done in accordance with paragraph (i) of this AD must be reported to Boeing at the times specified in, and in accordance with, the instructions contained in Section 4 of Boeing Report No. L26–011, ''DC–8 All Series Supplemental Inspection Document (SID),'' Volume I, Revision 7, dated March 2008. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

**Corrective Actions**

(l) Any cracked structure of a PSE detected during any inspection required by paragraph (i) of this AD must be repaired before further flight using a method approved in accordance with the procedures specified in paragraph (p) of this AD. Accomplish the actions described in paragraphs (l)(1), (l)(2), and (l)(3) of this AD, at the times specified.

(1) Within 18 months after repair, do a damage tolerance assessment (DTA) that defines the threshold for inspection of the repair and submit the assessment for approval.

(2) Before reaching 75% of the repair threshold as determined in paragraph (l)(1) of this AD, submit the inspection methods and repetitive inspection intervals for the repair for approval.

(3) Before the repair threshold, as determined in paragraph (l)(1) of this AD, incorporate the inspection method and repetitive inspection intervals into the FAA-approved structural maintenance or inspection program for the airplane.

**Note 2:** For the purposes of this AD, we anticipate that submissions of the DTA of the repair, if acceptable, should be approved within 6 months after submission.

**Note 3:** FAA Order 8110.54, ''Instructions for Continued Airworthiness,'' dated July 1, 2005, provides additional guidance about the approval of repairs to PSEs.

**Inspection for Transferred Airplanes**

(m) Before any airplane that has exceeded the fatigue life threshold ($N_{TH}$) can be added to an air carrier's operations specifications, a program for the accomplishment of the inspections required by this AD must be established as specified in paragraph (m)(1) or (m)(2) of this AD, as applicable.

(1) For airplanes that have been inspected in accordance with this AD: The inspection of each PSE must be done by the new operator in accordance with the previous operator's schedule and inspection method, or the new operator's schedule and inspection method, at whichever time would result in the earlier accomplishment date for that PSE inspection. The compliance time for accomplishing this inspection must be measured from the last inspection done by the previous operator. After each inspection has been done once, each subsequent inspection must be done in accordance with the new operator's schedule and inspection method.

(2) For airplanes that have not been inspected in accordance with this AD: The inspection of each PSE required by this AD must be done either before adding the airplane to the air carrier's operations specification, or in accordance with a schedule and an inspection method approved by the Manager, Los Angeles ACO. After each inspection has been done once, each subsequent inspection must be done in accordance with the new operator's schedule.

**Acceptable for Compliance**

(n) McDonnell Douglas Report No. MDC 91K0262, ''DC–8 Aging Aircraft Repair Assessment Program Document,'' Revision 1, dated October 2000, provides inspection/replacement programs for certain repairs to the fuselage pressure shell. Accomplishing these repairs and inspection/replacement programs before the effective date of this AD is considered acceptable for compliance with the requirements of paragraphs (g) and (l) of this AD for repairs subject to that document.

(o) Actions done before the effective date of this AD in accordance with Boeing Report No. L26–011, ''DC–8 All Series Supplemental

Inspection Document (SID),'' Volume I, Revision 6, dated July 2005, are acceptable for compliance with the corresponding requirements of this AD.

**Alternative Methods of Compliance (AMOCs)**

(p)(1) The Manager, Los Angeles ACO, FAA, ATTN: Dara Albouyeh, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5222; 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.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Los Angeles ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and 14 CFR 25.571, Amendment 45, and the approval must specifically refer to this AD.

(4) AMOCs approved previously in accordance with AD 93–01–15 are approved as AMOCs for the corresponding provisions of this AD.

Issued in Renton, Washington, on August 21, 2008.

**Kevin Hull,**

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

[FR Doc. E8–20085 Filed 8–28–08; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF LABOR

### Office of the Secretary

### 29 CFR Part 2

### RIN 1290–AA23

## Requirements for DOL Agencies' Assessment of Occupational Health Risks

**AGENCY:** Office of the Assistant Secretary for Policy, Office of the Secretary, Department of Labor.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Pursuant to the Secretary of Labor's authority at 5 U.S.C. section 301, the Department of Labor (Department or DOL) is proposing to compile its existing best practices related to risk assessment into a single, easy to reference regulation, and to include two requirements to establish consistent procedures for conducting risk assessments that promote greater public input and awareness of the Department's health rulemakings. DOL proposes to issue an Advanced Notice of Proposed Rulemaking soliciting public information on relevant data when developing risk assessments for health standards regulating occupational exposure to toxic substances and hazardous chemicals, and to electronically post rulemaking documents and underlying studies used in a risk assessment. The proposed regulation implements recommendations of the 1997 Presidential/Congressional Commission on Risk Assessment and Risk Management Report,[1] and is consistent with Government-wide Office of Management and Budget's (OMB) Information Quality Guidelines,[2] current internal DOL Information Quality Guidelines,[3] and the OMB/Office of Science and Technology Policy 2007 Memorandum on Updated Principles for Risk Analysis.[4]

**DATES:** Comments must be submitted on or before September 29, 2008.

**ADDRESSES:** You may submit comments, identified by RIN, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail/Hand Delivery/Courier:* Submit comments to Office of the Assistant Secretary for Policy, 200 Constitution Avenue, NW., S–2312, Washington, DC 20210, *Attention:* Risk Assessment Policy. Because of security-related concerns, there may be a significant delay in the receipt of submissions by United States Mail. You must take this into consideration when preparing to meet the deadline for submitting comments.

*Instructions:* All submissions received must include the agency name and Regulatory Information Number (RIN) for this rulemaking. Comments received will be posted without change to *http://www.regulations.gov*, and available for public inspection in the Office of the Assistant Secretary for Policy, 200 Constitution Avenue, NW., S–2312, Washington, DC 20210, including any personal information provided. Persons submitting comments electronically are encouraged not to submit paper copies.

*Docket:* All comments will be available for public inspection and copying during normal business hours by contacting OASP at (202) 693–5959 (VOICE) (this is not a toll free number) or 1–877–889–5627 (TTY/TDD). You may also contact OASP at the address listed above. As noted above, the Department also will post all comments it receives on *http://www.regulations.gov*.

Copies of the proposed rule are available in alternative formats of large print and electronic file on computer disk, which may be obtained at the above-stated address.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Franks, Office of Regulatory and Programmatic Policy, Office of the Assistant Secretary for Policy, U.S. Department of Labor, (202) 693–5959. This is not a toll-free number. Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### A. Background

*The Department's Mission Under the Occupational Safety and Health Act and Federal Mine Safety and Health Act*

The Secretary of Labor (Secretary) is charged with ensuring safe and healthful working conditions for every working man and woman in the Nation. To that end, the Secretary has broad authority to promulgate health standards. In Section 6(b)(5) of the Occupational Safety and Health Act of 1970 (OSH Act)[5] and Section 101(a)(6)(A) of the Federal Mine Safety and Health Act of 1977 (Mine Act),[6] Congress required the Secretary to set health standards ''on the basis of the best available evidence.''[7] The Acts also state that, ''in addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field.''[8] In sum, the OSH Act and Mine Act

[1] Presidential/Congressional Commission on Risk Assessment and Risk Management, *Framework for Environmental Health Risk Management*, 2 Final Report 131–36 (1997).

[2] *http://www.whitehouse.gov/omb/fedreg/2005/011405_peer.pdf.*

[3] U.S. Dept. of Labor, *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Department of Labor* (2002) (Appendix II), *available at http://www.dol.gov/informationquality.htm.*

[4] OMB/OSTP Memorandum for the Heads of Executive Departments and Agencies, *Updated Principles for Risk Analysis (2007) M–07–24, available at http://www.whitehouse.gov/omb/memoranda/fy2007/m07-24.pdf.*

[5] 29 U.S.C. 655 (2000).

[6] 30 U.S.C. 811 (2000).

[7] 29 U.S.C. 655(b)(5) (2000), 30 U.S.C. 811(a)(6) (2000).

[8] *Id.*

reflect a basic principle that agency actions should be based on the best scientific information available at the time of the agency action. The Government-wide Office of Management and Budget (OMB) Information Quality Guidelines,[9] existing internal U.S. Department of Labor (Department or DOL) Information Quality Guidelines,[10] and the OMB/ Office of Science and Technology Policy (OSTP) 2007 Memorandum on Updated Principles for Risk Analysis further reflect this principle.[11]

This proposed regulation compiles in one easy-to reference regulation, all of the Department's existing best practices related to risk assessment, and includes two requirements to establish consistent procedures that promote greater public input and awareness of the Department's health rulemakings. The Department is proposing this rulemaking pursuant to the Secretary's authority at 5 U.S.C. section 301 to prescribe regulations related to the performance of the agency's business and the conduct of its employees. Because the Department is not required to seek public comment on its internal procedures under the Administrative Procedure Act (APA),[12] the Regulatory Flexibility Act does not apply to this rulemaking.[13] Although the Department is not required to seek public comment on this proposal, it has chosen to do so in order to gain valuable public input and in the interests of full transparency and accountability. In addition, because this rulemaking merely communicates to the public how the Department will regulate itself, and does not require the regulated community to provide conditions or adopt practices to provide safe or healthful employment, it does not constitute an ''occupational safety and health standard'' for the purposes of the public hearing requirements of the OSH Act[14] and Mine Act.[15]

*Public Accountability and the Need for Consistency, Reliability and Transparency in the Department's Risk Assessment Procedures*

Federal risk assessment and management policies were thoroughly studied by the Presidential/ Congressional Commission on Risk Assessment and Risk Management (Commission on Risk), which was created by the 1990 Clean Air Act Amendments, ''to make a full investigation of the policy implications and appropriate uses of risk assessment and risk management in regulatory programs under various Federal laws to prevent cancer and other chronic human health effects which may result from exposure to hazardous substances.''[16] In its 1997 final report, the Commission on Risk made specific findings with respect to the Occupational Safety and Health Administration (OSHA). In particular, it found that, ''OSHA seems to have relied upon a case-by-case approach for performing risk assessment and risk characterization,'' and recommended that the agency publish guidelines laying out its scientific and policy defaults with regard to risk assessment and risk characterization in support of risk management.[17] This NPRM implements the Commission on Risk's recommendation by explaining the agency's existing best practices related to risk assessment in one easy-to reference regulation, and including two requirements to establish consistent procedures that promote greater public input into and awareness of the Department's health rulemakings. This proposed regulation is a compilation of basic principles and practices related to risk assessment. As such, it ensures that DOL's scientists have the necessary latitude to exercise their professional discretion and to modify their assessments as science evolves, while assuring that the Department's process is fully accountable to the public.

This proposal is drawn from the agency's historical experience promulgating rules under the OSH Act[18] and the Mine Act,[19] and technical expertise on the American workforce and occupational health standards in general. It is also consistent with OMB/ OSTP's September 19, 2007, Memorandum to the Heads of Executive Departments and Agencies on Updated Principles for Risk Analysis,[20] the OMB Government-wide Information Quality Guidelines,[21] and existing internal DOL Information Quality Guidelines.[22]

The core principles underlying this rulemaking are:

- *Transparency:* The reasoning, assumptions, calculations, methods and data on which risk assessment findings and risk management decisions are made should be presented in an open and readily accessible format to enable members of the public to review, critique, and replicate the process leading to the Department's findings and decisions. Where results embody uncertainty, the degree of uncertainty should be clearly stated and quantified in probabilistic terms if adequate data are available, and the analysis adds value to the risk management decision process.
- *Consistency:* The approaches used to assess risk should conform to accepted scientific practice and strive to be consistent with approaches used in previous occupational standards that address similar hazards and agents. A justification should be provided when alternate approaches are employed. The choice of methods, procedures and approaches should be based on objective criteria and adhere to basic principles that have achieved general scientific acceptance. While consistency is a key objective, risk analysis is an evolving scientific process and agencies must retain sufficient flexibility to incorporate methodological and analytical advances. In addition, to the extent risk analyses must be tailored for particular projects, the Department's agencies should clearly articulate the reasons for selecting the methodologies used.
- *Reliability:* Analyses and calculations must be based on the best available scientific data and practices consistent with the Federal Government's directives on information quality and peer review.

The underlying principles of this proposed rulemaking are not new, but rather reflect existing agency best practices and broad scientific consensus. This proposed rulemaking will reinforce those existing best practices and by compiling DOL's procedures into a single, easy to reference, policy statement reflects the agency's historical commitment to public accountability.

[9] *http://www.whitehouse.gov/omb/fedreg/2005/011405_peer.pdf.*

[10] *http://www.dol.gov/informationquality.htm.*

[11] OMB/OSTP Memorandum for the Heads of Executive Departments and Agencies, *Updated Principles for Risk Analysis (2007) M–07–24, available at http://www.whitehouse.gov/omb/memoranda/fy2007/m07-24.pdf.*

[12] 5 U.S.C. 553(b)(A).

[13] *See*, 5 U.S.C. 601 (2000).

[14] *See*, 29 U.S.C. 652(8) (2000) and § 655(b)(3) (2000).

[15] *See*, 30 U.S.C. 811(a)(3) (2000).

[16] 42 U.S.C. 7412 note, Pub. L. 101–549, § 303, Nov. 15, 1990.

[17] Presidential/Congressional Commission on Risk Assessment and Risk Management, *Framework for Environmental Health Risk Management*, 2 Final Report 131–36 (1997) (Commission on Risk Report).

[18] 29 U.S.C. 655 (2000).

[19] 30 U.S.C. 811 (2000).

[20] OMB/OSTP Memorandum for the Heads of Executive Departments and Agencies, *Updated Principles for Risk Analysis (2007) M–07–24, available at http://www.whitehouse.gov/omb/memoranda/fy2007/m07-24.pdf.*

[21] *http://www.whitehouse.gov/omb/fedreg/2005/011405_peer.pdf.*

[22] *http://www.dol.gov/informationquality.htm.*

*Compilation of the Department's Existing Best Practices Related to Risk Assessment*

Currently, the Department does not have comprehensive regulations or internal guidance laying out its scientific and policy defaults with regard to risk assessment and characterization. The Department has, however, developed best practices related to risk assessment. It also follows internal DOL guidelines governing the information quality aspects of risk assessments, and conducts peer review of important scientific information in accordance with OMB's Government-wide Information Quality Bulletin for Peer Review.[23]

**B. The Department's Risk Assessment Paradigm**

Within the Department, risk assessments related to the regulation of occupational exposure to toxic substances and hazardous chemicals are performed primarily by OSHA and the Mine Safety and Health Administration (MSHA). This section provides a summary of the Department's risk assessment paradigm and existing best practices. For the purposes of this rulemaking, ''risk assessment'' is defined as the overall process of evaluating the risk associated with a health hazard from a toxic substance or hazardous chemical. A ''hazard'' is an intrinsic property of a substance or event, which has the potential to cause harm. ''Risk'' is the probability of the occurrence of harm given exposure to the hazard.

DOL's risk assessment paradigm incorporates the following steps:

a. Hazard identification. The hazard identification step examines whether a substance or chemical is a health hazard;

b. Dose-response assessment. The dose response assessment step examines the relationship between exposure to a hazardous substance and an adverse health outcome.

c. Exposure assessment. The exposure assessment step estimates exposure to the hazardous substance in the workplace.

d. Risk characterization. The risk characterization step provides estimates of risk to workers from occupational exposure scenarios of interest. The risk characterization also summarizes the key findings and discusses the limitations of the data, the choice of assumptions, the inherent uncertainties associated with the estimates of risk, limitations of the database, and how these factors impact the risk assessment.

Under the Department's existing current Information Quality Guidelines,[24] OSHA and MSHA are required to use the best available scientific methodologies, information and health and exposure data when conducting the analyses for each of the four steps in the risk assessment paradigm. In addition, to assure that a consistent and scientifically defensible approach is used throughout the process, DOL agencies describe key assumptions that are made in the risk assessment and discuss their impacts on the outcome and proper interpretation of the risk assessment in both the presentation of dose-response models to DOL risk managers and all public risk assessment documents.

*1. Hazard Identification*

The foundation for every risk assessment is a thorough compilation of relevant studies and information. Currently, the Department's agencies start the process of risk assessment by reviewing applicable scientific information to determine whether a toxic substance or hazardous chemical is a health hazard. Risk assessors gather applicable information directly from the National Institute for Occupational Safety and Health (NIOSH), the Environmental Protection Agency (EPA), other Federal agencies, academic researchers, stakeholders, petitioners, and other experts. Also, relevant studies may be provided to the DOL's agencies as part of a petition for rulemaking. Supplementary searches may be performed using scientific literature databases to obtain a complete profile of the chemical of interest.

An important component of hazard identification is the selection of health endpoints, which are the outcomes that result from exposure to a hazard. Endpoints can be selected for chemicals based on observational studies (epidemiologic studies), industrial hygiene assessments, medical assessments, experimental studies (toxicological studies), surveillance data, and toxicological screening batteries. The hazard identification discussion includes an explanation of the basis for selecting the particular health endpoints and an analysis of the overall reliability of studies relied upon. Given that there are many different designs for studies, simple rules for their evaluation do not exist. However, key factors that affect the reliability of the epidemiological studies include: the power of the study to detect the endpoint, biases that may make the study data not representative of the whole population, and confounders (e.g., age, smoking, or drug use). For animal studies, key considerations include quality of the study design, number of dose groups, number of animals per dose group, range of dose levels employed, route of exposure, and human relevance of health outcomes found in the studies.

The hazard identification phase of a risk assessment is currently published by DOL in the ''Health Effects'' chapter of the preamble to proposed and final rules. The discussion includes a summary of the database and an opinion as to the confidence with which conclusions can be drawn from this database, any alternative conclusions that are supported by the database, and any significant data gaps.

*2. Dose-Response Assessment*

A dose-response assessment examines the relationship between exposure to the toxin or chemical agent in question and the health effects of concern. Under the Department's current procedures, the quantitative estimation of health risk may involve the use of dose-response mathematical models which extrapolate scientifically observable data in humans or animals to a variety of exposure scenarios. The dose-response assessment ultimately strives to quantitatively estimate health risk in the range of occupational exposures of interest, e.g. the current exposure limit or exposure levels being considered for new or revised limits. The process generally involves: Selection of suitable study data, exposure metrics, and health endpoints; selection and application of appropriate risk models to the data; characterization of the uncertainties and limitations in the assessment; and a discussion of how the results compare to other published dose-response assessments for the same agent under similar exposure conditions.

While many studies may add to the overall weight of evidence, the Department often finds that only select data are suitable for making quantitative estimates of risk. Dose-response assessments must be conducted with complete scientific objectivity and transparency. The criteria and rationale for the selection of studies and health endpoints used in the analysis should be fully explained. The assessment should explore a range of plausible risk models and exposure metrics consistent with scientific understanding about the agent and its mode of action. If physiologically based models are applied to the data, the chosen input parameters should be well supported

[23] *http://www.whitehouse.gov/omb/fedreg/2005/011405_peer.pdf.*

[24] *http://www.dol.gov/informationquality.htm.*

and the model sufficiently documented and validated. The quantitative dose response assessment should give preference to those risk models that have previously undergone scientific peer review, if such models are appropriate and compatible with the available data. Risk descriptors should be presented as estimates of central tendency along with the appropriate upper and lower bounds. The assessment should strive to determine whether the quantitative estimates are consistent with other risk assessments and with positive and negative animal or epidemiological studies of the hazard in question. Any assumptions and other judgments used in the absence of data are stated and the rationale articulated.

The risk assessment should characterize strengths, limitations and uncertainties in the data sets and models employed in the dose-response assessment, as well as important sources of variability in risk from occupational exposures. The assessment should discuss the impact of key assumptions, uncertainties, and factors that interact with the agent of concern. Quantitative uncertainty and sensitivity analyses should be considered if adequate information is available and its use would add value to the risk management decision. Population variability in risk should be characterized when appropriate, given adequate information and analytical approaches. The assessment should address vulnerable and/or susceptible workers populations where there is scientific evidence to support potential differences in risk. The dose-response assessment is currently published by the Department in the ''Risk Assessment'' chapter of the preamble to proposed and final rules.

*3. Exposure Assessment*

In the exposure assessment phase of risk assessment, the Department identifies all industry sectors where employees may be potentially exposed to the substance of interest, and estimates current exposures by industry and job title. Exposure parameters include the level, duration, route, and frequency of exposure. In past rulemakings, OSHA and MSHA have found relatively few peer-reviewed studies from which they could reliably construct exposure profiles for all or most affected industry sectors. Instead, the agencies have typically relied on exposure data generated by enforcement activity, data obtained by the agencies or their contractors during site visits, exposure data submitted to the record by industry or labor organizations, and industry studies conducted by NIOSH. To develop a profile of the population at risk, the Department usually relies on statistics published by the Bureau of Labor Statistics (BLS) or the U.S. Bureau of the Census.

There should be included adequate characterization of relevant information in determining exposure to an agent. Where there are known differences in exposure for different individuals or subpopulations, the Department's agencies characterize this variability. Risk managers are better informed when an understanding of variability and the key contributors to the cause of this variability are presented in the exposure analysis.[25] The exposure assessment analysis is currently provided by the Department in the ''Industry Profile'' chapter of the Economic Analysis that accompanies proposed and final rules.

*4. Risk Characterization*

Finally, the risk characterization phase of a risk assessment summarizes the findings of the hazard identification, dose-response assessment, and the exposure assessment steps, and ultimately serves as a bridge between the risk assessment and risk management processes. Risk characterization conveys to agency risk managers, stakeholders, and the public, the key findings that risk assessors have derived about the nature and magnitude of the health risks from occupational exposure to a particular toxin or hazardous chemical. It also includes a discussion of the empirical strengths and weaknesses of the risk assessment. With this knowledge, a risk manager is prepared to make policy decisions about how to best manage the particular risk.

The Department's risk characterizations indicate the range of risks posed to workers. Specifically, the occupational exposure profiles and the quantitative estimates of risk are used to estimate the adverse health impacts, e.g., number of lung cancers, associated with current exposure conditions, and to analyze the benefits in terms of health risk avoided, e.g., lung cancers prevented, that are expected to arise from compliance with the proposed occupational standard. In the case of OSHA, the risk characterization also shows how those risks pertain to the legal requirement that the agency determine whether a significant risk exists that can be eliminated or lessened by a change in practices, and the reduction of risk that is necessary to eliminate significant risk.

OSHA and MSHA historically report their ''best estimate'' of the risk to workers exposed to a health hazard. This is typically an estimate that the agencies refer to as a ''maximum likelihood'' estimate (MLE) derived from using the statistical method of maximum likelihood estimation to fit a mathematical exposure-response curve to dose-response data. The agencies also typically report statistical upper and lower limits of their estimates of the MLE of risk.[26] Risk characterizations identify inherent uncertainties associated with estimates of risk. When a quantitative characterization of risk is provided, a range of plausible risk estimates is provided. Quantitative uncertainty analysis, sensitivity analysis, and a discussion of model uncertainty are utilized when possible. In addition, the Department is usually faced with a range of choices on assumptions and inputs used in dose-response models because risk assessments are typically conducted with limited amounts of data. Thus, some assumptions must be made to predict the effects of exposure to toxins or hazardous chemicals. The Supreme Court has confirmed that OSHA, ''is free to use conservative assumptions in interpreting the data with respect to carcinogens, risking error on the side of overprotection rather than underprotection.'' [27] The decision to adopt a particular assumption over another must always be rational, transparent and fully articulated to both risk managers and the public. The risk characterization is currently published by the Department in the ''Significance of Risk'' section of the preamble and the ''Benefits'' chapter of the Economic Analysis that accompanies proposed and final rules.

Once a risk assessment is complete, the agencies then turn to reduction of the identified risk through risk management. For the purposes of this rulemaking, ''risk management'' is defined as policy decision-making that applies the findings of risk assessment within statutory and other legal parameters to reduce, control or mitigate health hazards. The Supreme Court has interpreted the OSH Act to require that the Department find there is a ''significant risk'' that can be eliminated or lessened by a change in practices before promulgating any health

[25] U.S. Office of Management and Budget (OMB) and Office of Science and Technology Policy (OSTP), Memorandum for the Heads of Executive Departments and Agencies, *Updated Principles for Risk Analysis* (2007) M–07–24, *available at http://www.whitehouse.gov/omb/memoranda/fy2007/m07-24.pdf.*

[26] *See for example,* Hexavalent Chromium rule 39 FR 10195 (February 28, 2006).

[27] *Industrial Union Dept.* v. *American Petroleum Inst.,* 448 U.S. 607, 656, 100 S.Ct. 2844, 2871 (1980).

standard.[28] ''Significant risk'' was not, however, defined by the Court. Instead the Court deemed it to be the agency's, ''responsibility to determine, in the first instance, what it considers to be a 'significant' risk.'' [29] In a later case, the Supreme Court held that a cost-benefit analysis by OSHA is not required by the statute because a feasibility analysis is instead.[30] The Court explained that, ''Congress itself defined the basic relationship between costs and benefits, by placing the 'benefit' of worker health above all other considerations save those making attainment of this 'benefit' unachievable.'' [31]

Risk management integrates risk characterization results with Department policies and directives, and other information to assess policy options and recommend regulatory action. This may include consideration of both positive and negative studies, in light of each study's technical quality. The scientific community continues to develop techniques for weight of evidence evaluations, and DOL risk assessors and managers should make every effort to keep apprised of developments and recommended best practices.

### C. Best Available Evidence: DOL's Internal Guidance on Information Quality

As mentioned previously, the Department currently has internal guidance on information quality that seeks to assure that the best available evidence and most up to date scientific information is used in setting health standards to protect American workers. In the 1996 Amendments to the Safe Drinking Water Act (SDWA Amendments), Congress emphasized that risk analyses under the SDWA should be based upon the best available scientific methodologies, information, data, and weight of the available scientific evidence.[32] The Department later adopted those principles for its health and safety risk analyses in accordance with the requirements of OMB's Government-wide Information Quality Guidelines.

The Department's internal Information Quality Guidelines mandate that:

1. In taking agency actions that are based on the use of science in the analysis of health risks, the agency shall use:

a. The best available peer-reviewed science and supporting studies conducted in accordance with sound and objective scientific practices; and

b. Data collected by accepted methods or best available methods (if the reliability of the method and the nature of the decision justify use of the data), including:

i. Exposure data such as that generated by enforcement activity, contained in published literature, and submitted to the rulemaking record; and

ii. Testimony and comment from experts familiar with the underlying scientific information related to the risk analysis and other relevant information in the rulemaking record.

2. In the dissemination of public information about risks, the agency shall ensure that the presentation of information about risk effects is comprehensive, informative, and understandable, within the context of its intended purpose.

3. In a quantitative analysis of health risks made available to the public, the agency shall specify, to the extent practicable:

a. Each population addressed by any estimate of public health effects;

b. The expected risk or central estimate of risk for the specific populations;

c. Each appropriate upper-bound or lower-bound estimate of risk;

d. Each significant uncertainty identified in the assessment of public health effects and studies that would assist in resolving the uncertainty; and

e. Information, data, or studies, peer-reviewed where available, known to the agency that support, are directly relevant to, or fail to support any estimate of risk effects and a discussion that reconciles inconsistencies in the data or information, and explains the rationale used by the agency to rely on the data or information used for the risk analysis.

During the course of rulemaking, OSHA and MSHA consider and address data, expert testimony, and public comments pointing out uncertainties in the risk assessment and conflicting scientific evidence. The agencies present their reasons for accepting certain studies or data, rejecting others, and reconcile apparent discrepancies or conflicts in the available data to the extent possible. The Department strives to obtain the best available evidence in all key assumptions and defaults underlying its risk assessments, but the use of assumptions is invariably necessary if information is lacking. For example, the Department identifies all industry sectors where employees may be potentially exposed to the substance of interest and uses the best available data, combined with reasonable assumptions to fill data gaps, to characterize current exposures by industry and job title, and the frequency, intensity and duration of exposure to workers.[33]

The Department's internal Information Quality Guidelines are consistent with the principles of the OMB/OSTP 2007 Memorandum on Updated Principles for Risk Analysis. The agency also complies with OMB's Government-wide Information Quality Bulletin for Peer Review, which requires the peer review of important scientific information before dissemination or use by qualified, independent specialists or scientists who were not involved in producing the product under review. The Department posts on its Web site a public agenda of peer review plans for all planned and ongoing influential scientific information,[34] and submits an annual report to OMB summarizing the peer reviews conducted by the agency during the previous fiscal year.

### D. The Department's Proposals for Comment

The Department requests public comment on the following proposals:

ANPRM: Casting a Wide Net for the Best Available Data

The Department believes that any health rulemaking should involve the open and vigorous exchange of information and ideas among technical experts in the relevant disciplines, policy makers, and the public. In light of the OSH Act's and Mine Act's mandates that the Secretary set health standards based on the best scientific information available at the time of the agency action, it is particularly important that the Department seek out and receive all relevant data before proposing a health standard. Therefore, the Department is proposing that when developing a health standard regulating occupational exposure to a toxic substance or hazardous chemical, its agencies shall issue an Advance Notice of Proposed Rulemaking (ANPRM) soliciting public input on studies,

[28] *Id.* at 614–15.

[29] *Id.* at 655.

[30] *See, American Textile Mfrs. Inst., Inc.* v. *Donovan,* 452 U.S. 490, 509, 101 S.Ct. 2478, 2490–91 (1981).

[31] *Id.*

[32] 42 U.S.C. 300g–1(b)(3)(A) and (B) (2000).

[33] DOL has previously solicited information regarding the duration of employment in various occupational groups when proposing to regulate occupational exposure to tuberculosis. *See* 62 FR 54,160, 54,193 (October 17, 1997). (Later withdrawn for unrelated reasons. 68 FR 75767 (December 31, 2003)). In the Hexavalent Chromium rulemaking, a 20 year working life was selected as another reasonable assumption to illustrate the effect of exposure duration on risk, 71 FR 10,100, 10,224 (February 28, 2006), and the Asbestos rule presented risk estimates for 1, 20 and 45 year durations. 51 FR 22,612, 22,644 (June 20, 1986).

[34] *http://www.dol.gov/asp/peer-review/index.htm.*

scientific information, data describing the frequency, intensity and duration of exposure of workers in the affected industries and occupations, key default factors and assumptions, and other relevant information, prior to issuing a Notice of Proposed Rulemaking (NPRM) or other regulatory action in that health rulemaking. The Department's agencies shall publish an ANPRM except when issuing emergency temporary standards under section 6(c) of the OSH Act, 29 U.S.C. 655(c) or section 101(b)(1) of the Mine Act, 30 U.S.C. 811(b)(1).

Any public comments received in response to the ANPRM shall be reviewed by the agencies, and the strength or weakness of any data received shall be carefully evaluated by agency scientists and experts in the same manner that comments in response to an NPRM are reviewed. The Department expects that the publication of the ANPRM, collection of public comments, and review will occur simultaneously with the ordinary development of the standard in order to ensure that the rulemaking process is not delayed or slowed. For instance, publication of the ANPRM could occur soon after the proposed standard is placed on the regulatory agenda which is the period of time when the agency would typically be gathering information related to the proposed rulemaking, or concurrently with the Small Business Regulatory Enforcement Fairness Act (SBREFA) [35] process. Finally, it should be noted that using an ANPRM to gather public information at the beginning of the development of a health standard is not a new procedure for the Department. DOL has issued an ANPRM in at least half of the health standards regulating exposure to toxins that have been promulgated over the last two Administrations, including the last three standards issued, Hexavalent Chromium in 2006,[36] Methylene Chloride in 1997,[37] and Butadiene in 1996.[38] The Department believes the risk assessment and rulemaking process will be strengthened by consistent opportunities for public input through an ANPRM.

Electronic Posting of Rulemaking Information

Transparency and easy public access to all rulemaking information is a key principle of this rulemaking and also consistent with the existing DOL and OMB guidelines. Accordingly, the Department proposes to electronically post together in an easily accessible and well-organized format on *http://www.regulations.gov* and/or *http://www.dol.gov,* all relevant documents related to a rulemaking addressing occupational exposure to toxic substances and hazardous chemicals no later than fourteen days after the conclusion of the relevant rulemaking step that relied upon or utilized those documents. Those rulemaking steps would include but are not limited to: publication of the ANPRM, conclusion of the SBREFA process, publication of the NPRM, conclusion of any public hearing under the OSH Act and Mine Act, and the publication of the Final Rule. The documents to be posted would include but are not limited to: any underlying scientific studies relied upon in the rulemaking, to the extent possible given copyright limitations; all risk assessment analyses underlying the NPRM and Final Rule; the text of the ANPRM; SBREFA process documents; the text of the NPRM; all public hearing transcripts and briefs; all public comments; the final docket of the rulemaking; and the text of the Final Rule. This transparency requirement will move the Department closer to the EPA approach of providing all applicable documents in the rulemaking docket, and enhance public access to agency information.

Conclusion

The Department invites comment from the public on two proposed procedural requirements: (1) To issue an ANPRM seeking public input on key data and assumptions when developing a health standard; and (2) to electronically post all relevant documents after each regulatory step in a health rulemaking.

We encourage the submission of comments and other relevant information to the Federal eRulemaking Portal at *http://www.regulations.gov* or to the Office of the Assistant Secretary for Policy in accordance with the instructions provided above.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulations. The agency has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, there is no requirement for an assessment of potential costs and benefits under section 6(a)(3) of that order.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule under section 553(b) of the Administrative Procedure Act (APA), the requirements of the Regulatory Flexibility Act (5 U.S.C. 601) pertaining to regulatory flexibility do not apply to this rule. See 5 U.S.C. 601(2).

Paperwork Reduction Act

This rule is not subject to section 350(h) of the Paperwork Reduction Act (44 U.S.C. 3501) since it does not contain any new collection of information requirements.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not classified as a ''rule'' under Chapter 8 of the Small Business Regulatory Enforcement Fairness Act of 1996, because it is a rule pertaining to agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties. See 5 U.S.C. 804(3)(C).

**List of Subjects in 29 CFR Part 2**

Administrative practice and procedure, Claims, Courts, Government employees.

For the reasons outlined in the preamble, the Department of Labor proposes to amend 29 CFR part 2 as follows:

## PART 2—GENERAL REGULATIONS

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

**Authority:** 5 U.S.C. 301; Executive Order 13198, 66 FR 8497, 3 CFR 2001 Comp., p. 750; Executive Order 13279, 67 FR 77141, 3 CFR 2002 Comp., p. 258.

2. Add § 2.9 to subpart A to read as follows:

### § 2.9 Assessment of Occupational Health Risks.

(a) *Purpose.* These provisions apply to risk assessments prepared by DOL agencies and to risk assessments prepared by others, for use by DOL, in relation to the development of health standards. Risk assessments for the development of health standards addressing toxic substances and hazardous chemicals shall be prepared in the following manner.

(b) *Definition. Significant risk.* The Department shall find, as a threshold matter, that there is a significant risk that can be eliminated or lessened by a change in practices before promulgating a health standard pursuant to the Occupational Safety and Health Act.

(c) *Risk assessments overview.*

[35] 5 U.S.C. 609(b).

[36] 71 FR 10,100 (February 28, 2006).

[37] 62 FR 1,493 (January 10, 1997).

[38] 61 FR 56,746 (November 4, 1996).

(1) Department agencies shall issue an Advance Notice of Proposed Rulemaking (ANPRM) soliciting public input on relevant studies and scientific information, data regarding the frequency, intensity, duration and other parameters of worker exposure in the affected industries, occupations and activities, key default factors and assumptions, and other relevant information related to the development of a health standard regulating occupational exposure to a particular toxic substance or hazardous chemical prior to issuing a Notice of Proposed Rulemaking (NPRM) or other regulatory action in that health rulemaking, except when promulgating an emergency temporary standard under section 6(c) of the OSH Act, 29 U.S.C. 655(c) (2000) or section 101(b)(1) of the Mine Act, 30 U.S.C. 811(b)(1) (2000).

(2) In its risk assessments, the Department's agencies shall identify and discuss key issues including, but not limited to, the reliability of data, significant uncertainties, choice of assumptions and default factors, and shall address all related comments from the public and peer reviewers in the subsequent Notice of Proposed Rulemaking (NPRM) and Final Rule.

(3) Risk assessments shall utilize the best available evidence, and the latest available scientific data in the field, including industry-by-industry evidence relating to working life exposures.

(4) Department risk assessments shall include and identify the following four components:

(i) *Hazard identification.* The hazard identification step examines whether a substance or chemical is a health hazard;

(ii) *Dose-response assessment.* The dose response assessment step examines the relationship between exposure to a hazardous substance and an adverse health outcome;

(iii) *Exposure assessment.* The exposure assessment step estimates exposure to the hazardous substance in the workplace;

(iv) *Risk characterization.* The risk characterization step provides estimates of risk to workers from occupational exposure scenarios of interest. The risk characterization also summarizes the key findings and discusses the limitations of the data, the choice of assumptions, the inherent uncertainties associated with the estimates of risk, limitations of the database, and how these factors impact the risk assessment.

(5) *Information quality and peer review.* Risk assessments shall be performed in accordance with Office of Management and Budget's (OMB) and the Department's information quality and peer review guidelines.

(d) *Public access to rulemaking information.*

(1) The Department shall post together in an easily accessible and well organized format on *http://www.regulations.gov,* all relevant documents related to any rulemaking addressing occupational exposure to toxic substances and hazardous chemicals no later than fourteen days after the conclusion of the relevant step in the rulemaking process, including but not limited to publication of the ANPRM, conclusion of the Small Business Regulatory Fairness Act (SBREFA) process, publication of the NPRM, conclusion of any public hearing and the publication of the Final Rule.

(2) The documents posted shall include but are not limited to any underlying scientific studies relied upon in the rulemaking, to the extent possible given copyright limitations; all risk assessment analyses underlying the NPRM and Final Rule; the text of the ANPRM; SBREFA process documents; the text of the NPRM; all public hearing transcripts and briefs; all public comments; the final docket of the rulemaking; and the text of the Final Rule.

Signed at Washington, DC, this 26th day of August 2008.

**Leon R. Sequeira,**

*Assistant Secretary for Policy.*

[FR Doc. E8–20179 Filed 8–28–08; 8:45 am]

BILLING CODE 4510–23–P

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 946

**[VA–126–FOR; Docket ID OSM–2008–0012]**

## Virginia Regulatory Program

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

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** We are announcing receipt of a proposed amendment to the Virginia regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The amendment revises the Virginia Coal Surface Mining Reclamation Regulations pertaining to ownership and control, valid existing rights, self-bonding, and availability of records. Virginia intends to revise its program to be consistent with the corresponding Federal regulations and SMCRA and is responding, in part, to 30 CFR Part 732 letters.

This document gives the times and locations that the Virginia program and this submittal are available for your inspection, the comment period during which you may submit written comments, and the procedures that we will follow for the public hearing, if one is requested.

**DATES:** We will accept written comments until 4 p.m., local time, September 29, 2008. If requested, we will hold a public hearing on September 23, 2008. We will accept requests to speak until 4 p.m., e.s.t., on September 15, 2008.

**ADDRESSES:** You may submit comments, identified by ''VA–126–FOR/OSM–2008–0012'' by any of the following methods:

- *E-mail: ebandy@osmre.gov.*
- *Mail/Hand Delivery:* Earl Bandy, Knoxville Field Office, Office of Surface Mining Reclamation and Enforcement, 710 Locust Street, 2nd Floor, Knoxville, Tennessee 37902, Telephone: (865) 545–4103.
- *Federal eRulemaking Portal: http://www.regulations.gov.* The proposed rule has been assigned Docket ID OSM–2008–0012. If you would like to submit comments through the Federal eRulemaking Portal, go to *http://www.regulations.gov* and do the following. Click on the ''Advanced Docket Search'' button on the right side of the screen. Type in the Docket ID OSM–2008–0012 and click the ''Submit'' button at the bottom of the page. The next screen will display the Docket Search Results for the rulemaking. If you click on OSM–2008–0012, you can view the proposed rule and submit a comment. You can also view supporting material and any comments submitted by others.

*Instructions:* All submissions received must include the agency docket number ''OSM–2008–0012/VA–126–FOR'' for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' section in this document. You may also request to speak at a public hearing by any of the methods listed above or by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT**.

*Docket:* You may review copies of the Virginia program, this submission, a listing of any scheduled public hearings, and all written comments received in response to this document at OSM's

Knoxville Field Office at the address listed above during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the submission by contacting OSM's Knoxville Field Office. In addition, you may receive a copy of the submission during regular business hours at the following location: Virginia Department of Mines, Minerals, and Energy, 3405 Mountain Empire Road, Big Stone Gap, Virginia 24219, Telephone: (276) 523–8100, E-Mail: *lsv@mme.state.va.us*.

**FOR FURTHER INFORMATION CONTACT:** Earl Bandy, Telephone: (865) 545–4103. Internet: *ebandy@osmre.gov*.

**SUPPLEMENTARY INFORMATION:**

I. Background on the Virginia Program
II. Description of the Submission
III. Public Comment Procedures
IV. Procedural Determinations

## I. Background on the Virginia Program

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

## II. Description of the Submission

By letter dated June 11, 2008, the Virginia Department of Mines, Minerals, and Energy (DMME) sent us an informal proposed amendment to its program for a pre-submission review (VA–126–INF). We reviewed the pre-submission and responded to DMME, with comments, via electronic mail on July 2, 2008. By letter dated July 17, 2008, DMME formally submitted the proposed amendments to its program (Administrative Record No. VA–1089.) The full text of the program amendment is available for you to read at the location listed above under ''**ADDRESSES**.'' DMME proposes the following changes:

*1. 4VAC25–130–700.5. Definitions*

The corresponding Federal regulations for this section are 30 CFR 701.5, 761.5 and 880.5.

DMME proposes to either add, delete or modify the following definitions:

*''Applicant Violator System'' or ''AVS''* means an automated information system of applicant, permittee, operator, violation and related data the Federal Office of Surface Mining Reclamation and Enforcement (OSM) maintains and the division utilizes in the permit review process.

*''Control'' or ''controller''*, when used in Parts 4VAC25–130–773, 4VAC25–130–774, and 4VAC25–130–778 of this chapter, refers to or means (a) A permittee of a surface coal mining operation; (b) An operator of a surface coal mining operation; or (c) Any person who has the ability to determine the manner in which a surface coal mining operation is conducted.

*''Indemnity agreement''* means an agreement between two persons in which one person agrees to pay the other person for a loss or damage. The persons involved can be individual people, or groups of people, or legal organizations, such as partnerships, corporations or government agencies, or any combination of these. The agreement shall, at a minimum:

(a) Contain the date of execution.

(b) Be payable to the ''Treasurer of Virginia.''

(c) Be immediately due and payable in the event of bond forfeiture of the permit.

(d) Be payable in a sum certain of money.

(e) Be signed by the makers.

*''Knowing'' or ''knowingly''*, which means that a person who authorized, ordered, or carried out an act or omission knew or had reason to know that the act or omission would result in either a violation or a failure to abate or correct a violation.

*''Own'', ''owner'', or ''ownership''*, as used in Parts 4VAC25–130–773, 4VAC25–130–774, and 4VAC25–130–778 of this chapter (except when used in the context of ownership of real property), means being a sole proprietor or owning of record in excess of 50 percent of the voting securities or other instruments of ownership of an entity.

''*Self-bond*,'' as provided by Part 801 of this chapter, means:

(a) For an underground mining operation, an indemnity agreement in a sum certain payable on demand to the Treasurer of Virginia, executed by the applicant and by each individual and business organization capable of influencing or controlling the investment or financial practices of the applicant by virtue of this authority as an officer or ownership of all or a significant part of the applicant, and supported by a certification that the applicant participating in the Pool Bond Fund has a net worth, total assets minus total liabilities equivalent to $1 million. Such certification shall be by an independent certified public accountant in the form of an unqualified opinion.

This definition in the Virginia regulation is being amended to delete the reference to ''cognovit note'' and replace such with ''indemnity agreement'', as the approved bonding instrument under 4VAC25–130–801.13, as being amended.

The DMME is proposing to delete ''in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the division'' and add ''of a permittee'' after ''change.'' As proposed, the definition will read as follows:

*''Transfer, assignment, or sale of permit rights''* means a change of a permittee.

The DMME is proposing to add the following definition of ''*Valid Existing Rights*'' (VER) and delete from subsection (a) ''for haulroads, that a person possesses a valid existing right for an area protected under of the Act on August 3, 1977, if the application of any of the prohibitions contained in that section to the property interest that existed on that date would effect a taking of the person's property which would entitle the person to compensation under the Fifth and Fourteenth Amendments to the United States Constitution;'' and add ''§ 45.1–252 D''; the DMME is proposing to add ''For haulroads,'' at the beginning of subsection c; at subsection (c) (2), ''Was under a properly'' is added at the beginning sentence and ''A'' is deleted; ''or'' is added after ''way''; the DMME is proposing to add subsection 3 ''Was used or contained in a valid permit that existed when the land came under the protection of § 45.1–252D or § 4 VAC 25–130–761.11.'' Subsection (c) is deleted entirely and subsection (e) is renamed subsection (d). In subsection (d), ''That an'' is added to the beginning of the sentence; ''(s) that are'' is added after ''document''; ''the'' is deleted after ''establish'' and ''valid existing'' is added before ''rights''; ''to which the standard of paragraphs (a) and (d) of this definition applies'' is deleted after ''rights''. As proposed, the definition will read as follows:

''*Valid existing rights*'' means a set of circumstances under which a person may, subject to division approval, conduct surface coal mining operations on lands where § 45.1–252 D of the Act and § 4VAC25–130–761.11 of the regulations would otherwise prohibit such operations. The possession of valid existing rights only confers an exception from the prohibitions of § 45.1–252 D and § 4VAC25–130–761.11. A person seeking to exercise valid existing rights would need:

(a) Except as provided in paragraph (c) of this definition, a demonstration of the legally binding conveyance, lease, deed, contract, or other document which vests the person, or predecessor in interest, with the right to conduct the type of surface coal mining operations intended. The right must exist at the time the land came under the protection of § 4VAC25–130–761.11 and § 45.1–252 D;

(b) A demonstration of compliance with one of the following—

(1) That all permits and other authorizations required to conduct surface coal mining operations had been obtained, or a good faith attempt to obtain all necessary permits and authorizations had been made, before the land came under the protection of § 45.1–252 D or § 4VAC25–130–761.11.

(2) That the land needed for and immediately adjacent to a surface coal mining operation for which all permits and other authorizations required to conduct surface coal mining operations had been obtained, or a good faith attempt made to obtain such permits and authorizations occurred before the land came under the protection of § 45.1–252 D or § 4VAC25–130–761.11. The person must demonstrate that prohibiting the expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of § 45.1–252 D or § 4VAC25–130–761.11. Except for operations in existence before August 3, 1977, or for which a good faith effort to obtain all necessary permits had been made before August 3, 1977, this standard does not apply to lands already under the protection of § 45.1–252 D or § 4VAC25–130–761.11 when the division approved the permit for the original operation or when the good faith effort to obtain all necessary permits for the original operation was made. In evaluating whether a person meets this standard, the division may consider—

(i) The extent to which coal supply contracts or other legal and business commitments that occurred before the land came under the protection of §§ 45.1–252 D or § 4VAC25–130–761.11 depend upon the use of the land for surface coal mining operations.

(ii) The extent to which plans used to obtain financing for the operation before the land came under the protection of § 45.1–252 D or § 4VAC25–130–761.11 relied upon use of that land for surface coal mining operations.

(iii) The extent to which investments in the operation made before the land came under the protection of § 45.1–252 D or § 4VAC25–130–761.11 relied upon the use of that land for surface coal mining operations.

(iv) Whether the land lies within the area identified on the life-of-mine map under § 4VAC25–130–779.24(c) that was submitted before the land came under the protection of § 45.1–252 D or § 4VAC25–130–761.11.

(c) For haulroads, a person who claims valid existing rights to use or construct a road across the surface of lands protected by § 45.1–252 D or § 4VAC25–130–761.11 must demonstrate that one or more of the following circumstances exist, the road—

(1) Existed when the land upon which it is located came under the protection of § 45.1–252 D or § 4VAC25–130–761.11, and the person has the legal right to use the road for surface coal mining operations.

(2) Was under a properly recorded right of way or easement for a road in that location at the time the land came under the protection of § 45.1–252 D or § 4VAC25–130–761.11, and under the document creating the right of way or easement, and under subsequent conveyances, the person has a legal right to use or construct a road across the right of way or easement for surface coal mining operations.

(3) Was used or contained in a valid permit that existed when the land came under the protection of § 45.1–252 D or § 4VAC25–130–761.11.

(d) That an interpretation of the terms of the document(s) that are relied upon to establish valid existing rights shall be based either upon applicable Virginia statutory or case law concerning interpretation of documents conveying mineral rights or, where no applicable state law exists, upon the usage and custom at the time and place it came into existence. This amendment would apply to permit applications submitted on and after the date the amendment is approved by the Secretary of Interior and becomes effective upon promulgation pursuant to the Federal and Virginia Administrative Process Acts.

The DMME is proposing to add the following definition:

''*Violation*'', when used in the context of the permit application information or permit eligibility requirements of §§ 45.1–235 and 45.1–238(C) of the Act and related regulations, means:

(1) A failure to comply with an applicable provision of a Virginia, Federal, or other State law or regulation pertaining to air or water environmental protection, as evidenced by a written notification from a governmental entity to the responsible person; or

(2) A noncompliance for which the division has provided one or more of the following types of notice or OSM or a State regulatory authority has provided equivalent notice under corresponding provisions of a Federal or State regulatory program—

(i) A notice of violation under § 4VAC–25–130–843.12.

(ii) A cessation order under § 4VAC–25–130–843.11.

(iii) A final order, bill, or demand letter pertaining to a delinquent civil penalty assessed under Part 4VAC–25–130–845 or 4VAC–25–130–846.

(iv) A bill or demand letter pertaining to delinquent reclamation fees owed under 30 CFR Part 870.

(v) A notice of bond forfeiture under § 4VAC–25–130–800.50 when—

(A) One or more violations upon which the forfeiture was based have not been abated or corrected;

(B) The amount forfeited and collected is insufficient for full reclamation under § 4VAC–25–130–800.50 or § 4VAC–25–130–801.19, the division orders reimbursement for additional reclamation costs, and the person has not complied with the reimbursement order.

The DMME is proposing to add the following definition:

''*Violation, failure or refusal*'', for purposes of Part 4VAC25–130–846, means:

(1) A failure to comply with a condition of an issued permit or the regulations implementing those sections; or

(2) A failure or refusal to comply with any order issued under Part 4VAC25–130–843, or any order incorporated in a final decision issued by the Director, except an order incorporated in a decision issued under § 45.1–246 of the Act.

The DMME is proposing to add ''or regulation'' after ''law'' in the definition of *Violation notice*. As proposed, it will read as follows:

''*Violation notice*'' means any written notification from a governmental entity of a violation of law or regulation, whether by letter, memorandum, legal or administrative pleading, or other written communication.

The DMME proposes to add the definition of ''*Willful or Willfully*.'' As proposed, it will read as follows:

*''Willful'' or ''Willfully''* means that a person who authorized, ordered or carried out an act or omission that resulted in either a violation or the failure to abate or correct a violation acted:

(1) Intentionally, voluntarily, or consciously; and

(2) With intentional disregard or plain indifference to legal requirements.

The DMME is proposing to delete the following definitions:

''*Cognovit note*'' means an extraordinary note which authorizes an attorney to confess judgment against the person or persons signing it. It is written authority of a debtor and a direction by him for entry of a judgment against him if the obligation set forth in the note is not paid when due. Such judgment may be taken by any person holding the note, which cuts off every defense which makers of the note may otherwise have and it likewise cuts off all rights of appeal from any judgment taken on it. The note shall, at a minimum:

(a) Contain the date of execution.

(b) Be payable to the ''Treasurer of Virginia.''

(c) Be due and payable in the event of bond forfeiture of the permit.

(d) Be payable in a sum certain of money.

(e) Be signed by the makers.

This definition in the Virginia regulations is being deleted, as the indemnity agreement will be the bonding instrument utilized under 4VAC25–130–801.13 (as being amended).

''*Owned or controlled*'' and ''*owns or controls*'' mean any one or a combination of the relationships specified in paragraphs (a) and (b) of this definition:

(a)(i) Being a permittee of a surface coal mining operation; (ii) based on instrument of ownership or voting securities, owning of record in excess of 50% of an entity; or (iii) having any other relationship which gives one person authority directly or indirectly to determine the manner in which an applicant, an operator, or other entity conducts surface coal mining operations.

(b) The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant surface coal mining operation is conducted:

(1) Being an officer or director of an entity;

(2) Being the operator of a surface coal mining operation;

(3) Having the ability to commit the financial or real property assets or working resources of an entity;

(4) Being a general partner in a partnership;

(5) Based on the instruments of ownership or the voting securities of a corporate entity, owning of record 10 through 50% of the entity; or

(6) Owning or controlling coal to be mined by another person under a lease, sublease or other contract and having the right to receive such coal after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining operation.

*2. 4VAC25–130–773.13. Public Participation in Permit Processing*

The corresponding Federal regulation for this section is 30 CFR 773.6. The DMME proposes to add ''or the last publication date of the newspaper notice required by Paragraph (a) of this section, whichever is later'' after ''notification''. As proposed, it reads as follows:

(b) Comments and objections on permit application.

(1) Within 30 days after notification or the last publication date of the newspaper notice required by Paragraph (a) of this section, whichever is later, written comments or objections on an application for a permit, significant revision to a permit under 4VAC25–130–774.13, or renewal of a permit under 4VAC25–130–774.15, may be submitted to the division by public entities notified under Paragraph (a)(3) of this section with respect to the effects of the proposed mining operations on the environment within their areas of responsibility.

This change in the Virginia regulation will allow public entities to have the same period of time to review and comment on the application as afforded the public.

*3. 4VAC25–130–773.15. Review of Permit Applications*

The corresponding Federal regulation for this section is 30 CFR 773.7.

The DMME proposes to delete from (a)(1) '', unless a later time is necessary to provide an opportunity for a hearing under subdivision (b)(2) of this section.''

The DMME proposes to add to (a) subdivisions (3) and (4) which state:

(3) The division shall review the information submitted under §§ 4VAC25–130–778.13 and 4VAC25–130–778.14 regarding the applicant's and/or operator's permit histories, business structure, and ownership and control relationships.

(4) If the applicant or operator does not have any previous mining experience, the division may conduct additional reviews to determine if someone else with surface coal mining experience controls or will control the mining operation.

The DMME proposes to delete from subdivision (b)(1) ''by any person who owns or controls the applicant'' after ''operator''; proposes to add ''; or if a surface coal mining and reclamation operation indirectly owned or controlled by the applicant or operator has an unabated or uncorrected violation and the applicant's or operator's control was established or the violation was cited after November 2, 1988.'' after ''subdivision''; proposes to delete subsection (b)(4)(i)(C)(1) entirely and join (2) to the end of the sentence at (C). This change is to reflect the deletion of the last sentence of Section 510(e) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1260(e)) per the ''Tax Relief and Health Care Act of 2006.'' As proposed, this section will read as follows:

(a) General.

(1) The division shall review the application for a permit, revision, or renewal; written comments and objections submitted; information from the AVS; and records of any informal conference or hearing held on the application and issue a written decision, within a reasonable time, either granting, requiring modification of, or denying the application. If an informal conference is held under 4VAC25–130–773.13(c), the decision shall be made within 60 days of the close of the conference.

(2) The applicant for a permit or revision of a permit shall have the burden of establishing that the application is in compliance with all the requirements of the regulatory program.

(3) The division shall review the information submitted under §§ 4VAC25–130–778.13 and 4VAC25–130–778.14 regarding the applicant's and/or operator's permit histories, business structure, and ownership and control relationships.

(4) If the applicant or operator does not have any previous mining experience, the division may conduct additional reviews to determine if someone else with surface coal mining experience controls or will control the mining operation.

(b) Review of violations.

(1) Based on available information concerning Federal and state failure-to-abate cessation orders, unabated Federal

and state imminent harm cessation orders, delinquent civil penalties issued pursuant to § 518 of the Federal Act and § 45.1–246 of the Code of Virginia, bond forfeitures where violations upon which the forfeitures were based have not been corrected, delinquent abandoned mine reclamation fees, and unabated violations of Federal and state laws, rules, and regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, the division shall not issue the permit if any surface coal mining and reclamation operation directly owned or controlled by either the applicant or operator is currently in violation of the Federal Act, this chapter, or any other law, rule or regulation referred to in this subdivision; or if a surface coal mining and reclamation operation indirectly owned or controlled by the applicant or operator has an unabated or uncorrected violation and the applicant's or operator's control was established or the violation was cited after November 2, 1988. In the absence of a failure-to-abate cessation order, the division may presume that a notice of violation issued pursuant to 4VAC25–130–843.12 or under a Federal or state program has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation, except where evidence to the contrary is set forth in the permit application or the AVS; or where the notice of violation is issued for nonpayment of abandoned mine reclamation fees or civil penalties. If a current violation exists, the division shall require the applicant or operator before the issuance of the permit, to either:

(i) Submit to the division proof that the current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation; or

(ii) Establish for the division that the applicant or operator or any person who owns or controls the applicant, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the current violation. If the initial judicial review authority under 4VAC25–130–775.13 affirms the violation, then the applicant shall within 30 days of the judicial action submit the proof required under subdivision (b)(1)(i) of this section.

(2) Any permit that is issued on the basis of proof submitted under subdivision (b)(1)(i) of this section that a violation is in the process of being corrected, or pending the outcome of an appeal described in subdivision (b)(1)(ii) of this section, shall be conditionally issued.

(3) If the division makes a finding that the applicant or the operator specified in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of the Act of such nature and duration, and with resulting irreparable damage to the environment as to indicate an intent not to comply with the Act, no permit shall be issued. Before such a finding becomes final, the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in 4VAC25–130–775.11.

(4)(i) Subsequent to October 24, 1992, the prohibitions of subsection (b) of this section regarding the issuance of a new permit shall not apply to any violation that:

(A) Occurs after that date;

(B) Is unabated; and

(C) Results from an unanticipated event or condition that arises from a surface coal mining and reclamation operation on lands that are eligible for remining under a permit held by the person making application for the new permit.

*4. 4VAC25–130–773.20(c)(3). Improvidently Issued Permits; General Procedures*

The corresponding Federal regulation for this section is 30 CFR 773.21.

The DMME proposes to amend subsection (c)(3) by deleting ''Suspend the permit until'' and delete (c)(4) entirely. As amended, it will read as follows:

(3) Serve the permittee with a preliminary finding that shall be based on evidence sufficient to establish a *prima facie* case that the permit was improvidently issued. The finding shall inform the permittee that the permit may be suspended or rescinded under 4VAC25–130–773.21, if the violation is not abated or the penalty or fee is not paid.

*5. 4VAC25–130–773.21. Improvidently Issued Permits; Rescission Procedures*

The corresponding Federal regulation for this section is 30 CFR 773.23.

The DMME proposes to add ''service of the notice of'' after ''After'' and ''as set forth in the notice'' after ''permit'' in subsection (b). A new subsection (c) is added; subsection (e) is renamed to (d) and ''or person aggrieved by the division's notice or decision'' is added after ''permittee''; ''§ 4 VAC 25–130–775.11 of this chapter and'' is added after ''under''. As amended, it will read as follows:

If the division, under 4VAC25–130–773.20(c)(*3* 4), elects to suspend or rescind an improvidently issued permit, it shall serve on the permittee a notice of proposed suspension and rescission which includes the reasons for the finding of the division under 4VAC25–130–773.20(b) and states that:

(a) Automatic suspension and rescission. After a specified period of time not to exceed 90 days the permit automatically will become suspended, and not to exceed 90 days thereafter rescinded, unless within those periods the permittee submits proof, and the division finds, that:

(1) The finding of the division under 4VAC25–130–773.20(b) was erroneous;

(2) The permittee or other person responsible has abated the violation on which the finding was based, or paid the penalty or fee, to the satisfaction of the responsible agency;

(3) The violation, penalty or fee is the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; or

(4) Since the finding was made, the permittee has severed any ownership or control link with the person responsible for, and does not continue to be responsible for, the violation, penalty or fee.

(b) Cessation of operations. After service of the notice of permit suspension or rescission, the permittee shall cease all surface coal mining and reclamation operations under the permit as set forth in the notice, except for violation abatement and for reclamation and other environmental protection measures as required by the division; and

(c) A person may challenge an ownership or control listing or finding by submitting to the division a written explanation of the basis for the challenge, along with any evidence or explanatory materials that substantiates that the person did not or does not own or control the entire surface coal mining operation or relevant portion or aspect thereof. The person may request that any information submitted to the division under this section be held as confidential, if it is not required to be made public under the Act. The division shall review the information and render a written decision regarding the person's ownership or control listing or link within 60 days from receipt of the challenge.

(d) Right to appeal. The permittee or person aggrieved by the division's notice or decision may file an appeal for administrative review of the notice or decision under subparagraph (c) under

§ 4VAC25–130–775.11 of this chapter and § 2.2–4000 *et seq.* of the Code of Virginia.

*6. 4VAC25–130–774.12. Post-Permit Issuance Requirements*

The corresponding Federal regulation for this section is 30 CFR 774.11.

The DMME proposes to add this entire new section to the Virginia regulations and will read as follows:

(a) For purposes of future permit eligibility determinations and enforcement actions, the division will utilize the AVS, retrieving and entering appropriate data regarding ownership, control, and violation information. The division shall enter into the AVS—

| Information— | Within 30 days after— |
|---|---|
| (1) Permit records | The permit is issued or subsequent changes made. |
| (2) Unabated or uncorrected violations | The abatement or correction period for a violation expires. |
| (3) Unpaid final civil penalties, charges, taxes or fees | The required due payment date. |
| (4) Changes in violation status | Abatement, correction, or termination of a violation, or a final decision from an administrative or judicial review proceeding. |

(b) In the event the permittee is issued enforcement action under § 4VAC25–130–843.11, and fails to timely comply with the order's remedial measures, the division shall instruct the permittee to provide or update all the information required by § 4VAC25–130–778.11. However, the permittee would not be required to submit this information if a court of competent jurisdiction has granted a stay of the cessation order and the stay remains in effect.

(c) The permittee shall notify the division within 60 days of any addition, departure, or change in position of any person identified under § 4VAC25–130–778.13. The permittee shall provide the date of such addition, departure, or change of such person(s).

(d) Should the division discover that the permittee, or a person listed in an ownership or control relationship with the permittee, owns or controls an operation with an unabated or uncorrected violation, it will determine whether enforcement action is appropriate under Parts 4VAC25–130–843 and 4VAC25–130–846, or other applicable provisions under the Act. The division may issue a preliminary finding of permit ineligibility under § 45.1–238(C) of the Act, if it finds that the person had control relationships and violations that would have made the person ineligible for a permit under § 4VAC25–130–773.15. The finding shall be in accordance with 4VAC25–130–773.20(c)(3).

(e) If a determination of permit ineligibility is rendered by the division, the person would have 30 days from service of the written finding to submit any information that would tend to demonstrate the person's lack of ownership or control of the surface coal mining operation. The division would issue a final determination regarding the permit eligibility within 30 days of receiving any information from the person or from the expiration date that the person could submit the information under this subparagraph. A person aggrieved by the division's eligibility finding would have the right to request review under Part 4VAC25–130–775.

*7. 4VAC25–130–774.17(a). Transfer, Assignment, or Sale of Permit Rights*

The corresponding Federal regulation for this section is 30 CFR 774.17.

As amended, it reads as follows:

(a) General. No transfer, assignment, or sale of rights granted by a permit shall be made without the prior written approval of the division. At its discretion, the division may allow a prospective successor in interest to engage in surface coal mining and reclamation operations under the permit during the pendency of an application for approval of a transfer, assignment, or sale of permit rights submitted under paragraph (b) of this section, provided that the prospective successor in interest can demonstrate to the satisfaction of the division that sufficient bond coverage will remain in place.

*8. 4VAC130–778.13. Identification of Interests*

The corresponding Federal regulation for this section is 30 CFR 778.11.

An application shall contain the following information:

(a) A statement as to whether the applicant and/or the operator, if different from the applicant, is a corporation, partnership, single proprietorship, association, or other business entity.

(b) The name, address, telephone number and, as applicable, employer identification number of the:

(1) Applicant;

(2) Applicant's resident agent;

(3) Operator, if different from the applicant; and

(4) Each business entity in the applicant's and operator's organizational structure, up to and including the ultimate parent entity of the applicant and operator; for every such business entity provide the required information for every president, chief executive officer, partner, member, and/or director (or persons in similar positions), a positions), and every person who owns of record 10 percent or more of the entity.

(c) For the applicant and operator, if different from the applicant, information required by paragraph (d) of this section for every:

(1) Officer.

(2) Partner.

(3) Member.

(4) Director.

(5) Person performing a function similar to a director.

(6) Person who owns, of record, 10 percent or more of the applicant or operator.

(d) For each person listed from paragraph (c) of this section:

(1) The person's name, address, and telephone number.

(2) The person's position title and relationship to the applicant or operator, including percentage of ownership and location in the organizational structure.

(3) The date the person began functioning in that position.

(e) A list of all the names under which the applicant, operator, partners, or principal shareholders, and the operator's partners or principal shareholders operate or previously operated a surface coal mining operation in the United States within a five-year period preceding the date of submission of the application, including the name, address, identifying numbers, including employer identification number, Federal or State permit number and MSHA number, the date of issuance of the MSHA number, and the regulatory authority.

(f) For the applicant and operator, if different from the applicant, a list of any pending permit applications for surface coal mining operations filed in the United States, identifying each application by its application number,

jurisdiction, or by other identifying information when necessary.

(g) For any surface coal mining operation the applicant and/or operator owned or controlled within a five year period preceding the submission of the permit application, and for any surface coal mining operation the applicant and/or operator controlled on that date, the:

(1) Permittee's and operator's name and address, tax identification numbers;

(2) Name of the regulatory authority with jurisdiction over the permit(s) with the corresponding Federal or State permit number(s) and MSHA number(s); and

(3) The permittee's and operator's relationship to the operation, including the percentage of ownership and location in the organizational structure.

(h) The name and address of each legal or equitable owner of record of the surface and mineral property to be mined, each holder of record of any leasehold interest in the property to be mined, and any purchaser of record under a real estate contract for the property to be mined.

(i) The name and address of each owner of record of all property (surface and subsurface) contiguous to any part of the proposed permit area.

(j) The Mine Safety and Health Administration (MSHA) numbers for all mine-associated structures that require MSHA approval.

(k) A statement of all lands, interest in lands, options, or pending bids on interests held or made by the applicant for lands contiguous to the area described in the permit application. If requested by the applicant, any information required by this Paragraph which is not on public file pursuant to State law shall be held in confidence by the division, as provided under 4VAC25–130–773.13(d)(3)(ii).

(l) Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed surface mining activities.

This list shall identify each license and permit by—

(1) Type of permit or license;

(2) Name and address of issuing authority;

(3) Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses; and

(4) If a decision has been made, the date of approval or disapproval by each issuing authority.

(m) After an applicant is notified that his application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under Paragraphs (a) through (d) of this section.

(n) The applicant shall submit the information required by this section and by 4VAC25–130–778.14 in any prescribed OSM format that is issued.

*9. 4VAC25–130–778.14(c). Violation Information*

The corresponding Federal regulation for this section is 30 CFR 778.14.

As proposed the amendment reads as follows:

(c) For any violation of a provision of the Federal Act or this chapter, or of any law, rule or regulation of the United States, or of any State law, rule or regulation enacted pursuant to Federal law, rule or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violation notices received by the applicant during the three year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or operator. For each violation notice or cessation order reported, the lists shall include the following information, as applicable:

*10. 4VAC25–130–800.52(a) and (a)(2). Bond Forfeiture Reinstatement Procedures*

There is no direct Federal counterpart regulation for this section.

As proposed, it reads as follows:

(a) Any person who owns or controls or has owned or controlled any operation on which the bond has been forfeited or the permit revoked pursuant to this chapter or pursuant to Chapters 15 [repealed], 17 (§ 45.1–198 *et seq.*) or 23 [repealed] of Title 45.1 of the Code of Virginia and who has not previously been reinstated by the Director may petition the Director for reinstatement. Reinstatement, if granted, shall be under such terms and conditions as set forth by the Director or his designee. The Director or his designee in determining the terms and conditions shall consider the particular facts and circumstances existing in each individual case. Reinstatement shall not be available to applicants for reinstatement where the division finds that the applicant controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of the Act of such nature and duration and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the Act, in accordance with 4VAC25–130–773.15(b)(3). As a minimum, the applicant for reinstatement shall satisfy the following requirements:

* * * * *

(5) Pay to the Director a reinstatement fee of $5,000 assessed by the Director on each site forfeited. These fees shall be used by the Director to accomplish reclamation on other forfeited or abandoned surface coal mining operations or conduct such other investigations, research or abatement actions relating to lands and waters affected by coal surface mining activities.

(b) Reinstatement by the Director shall be a prerequisite to the filing by the person (applicant for reinstatement) of any new permit application or renewal under this chapter or Chapters 15 [repealed], 17 (§ 45.1–198 *et seq.*), or 23 [repealed] of Title 45.1 of the Code of Virginia, but shall not affect the person's need to comply with all other requirements of said statutes, regulations or both promulgated thereunder.

*11. 4VAC25–130–801.12(c) and (d). Entrance Fee and Bond*

There is no direct Federal counterpart regulation for this section.

As proposed, it reads as follows:

(c) The Director may accept the bond of an applicant of an underground mining operation without separate surety, as provided by 4VAC25–130–801.13, upon a showing by such applicant of a net worth, total assets minus total liabilities (certified by an independent certified public accountant), equivalent to $1 million. Such net worth shall be, during the existence of the permit, certified annually by an independent certified public accountant and the certification submitted to the division on the anniversary date of the permit.

(d) The Director may accept the bond of an applicant of a surface mining operation or associated facility without separate surety, upon a showing by the applicant of those conditions set forth in 4VAC25–130–801.13(b). The financial solvency of the permittee shall be, during the existence of the permit, certified annually by an independent certified public accountant and the certification submitted to the division by June 1st or by such other date that the division may set.

*12. 4VAC25–130–801.13. Self-Bonding*

There is no direct Federal counterpart regulation for this section.

As proposed, it reads as follows:

(a) The division may accept a self-bond from the applicant of a proposed surface coal mining operation in the form of an indemnity agreement.

(1) The applicant shall provide the:

(i) Name and address of a suitable agent to receive service of process in the Commonwealth.

(ii) Name and address of the certified public accountant(s) who prepared the statement required by this section.

(iii) Location of the financial records used to prepare the C.P.A. statement required by this section.

(iv) Evidence indicating a history of satisfactory continuous operation.

(2) For a proposed underground mining operation, the applicant has a net worth, certified by an independent certified public accountant in the form of an unqualified opinion appended to the financial statement submitted, of no less than $1 million after total liabilities are subtracted from total assets. If the applicant is a subsidiary corporation, the applicant's parent organization's net worth need only be certified by the independent certified public accountant, if the applicant uses or includes any assets or liabilities of the parent organization in computing or arriving at the applicant's net worth. Where the division has a valid reason to believe that the permittee's net worth is less than required by this subsection, it may require a new certified public accountant's statement and certification.

(3) The applicant of a proposed surface mining operation or associated facility shall submit evidence substantiating the applicant's financial solvency, with the appropriate financial documentation required by Paragraph (a)(4) of this section.(4)(i) An indemnity agreement must be executed by the applicant, and said agreement must also be executed by:

(A) If a corporation, two corporate officers who are authorized to sign the agreement by a resolution of the board of directors, a copy of which shall be provided;

(B) To the extent that the history or assets of a parent organization are relied upon to make the showings of this Part, the parent organization of which it is a subsidiary, whether first-tier, second-tier, or further removed, in the form of (A) above;

(C) If the applicant is a partnership, all of its general partners and their parent organization or principal investors; and

(D) If the applicant is a married individual, the applicant's spouse;

(ii) Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the agreement;

(iii) The agreement shall be a binding obligation, jointly and severally, on all who execute it;

(iv) For the purposes of this Paragraph, principal investor or parent organization means anyone with a 10 percent or more beneficial ownership interest, directly or indirectly, in the applicant.

(b) Whenever a participant in the Pool Bond Fund applies for an additional permit or permits, the C.P.A. certification required by Paragraph (a)(2) or (*a*)(3) of this section shall be updated reflecting those prior reclamation obligations and self-bonding liabilities still in effect.

(c) If at any time the conditions upon which the self-bond was approved no longer prevail, the division shall require the posting of a surety or collateral bond before coal surface mining operations may continue. The permittee shall immediately notify the division of any change in his total liabilities or total assets which would jeopardize the support of the self-bond. If the permittee fails to have sufficient resources to support the self-bond, he shall be deemed to be without bond coverage in violation of 4VAC25–130–800.11(b).

*13. 4VAC25–130–840.14(c)(2). Availability of Records*

The corresponding Federal regulation for this section is 30 CFR 840.14.

The DMME is proposing to add ''or electronic transmittal'' after ''mail''; add ''the division offices and on its Internet site'' after ''at''; delete ''a Federal, State or local government office in the county where the mining is occurring or proposed to occur'' after ''at''; add ''or electronic transmittal'' after ''mail''; and delete ''A list of government offices where information may be inspected can be obtained on request by contacting the division's Big Stone Gap office.'' As proposed, it reads as follows:

(2) At the division's option in accordance with the Virginia Freedom of Information Act (Chapter 21 (§ 2.1–340 *et seq.*) of Title 2.1 of the Code of Virginia), providing copies of subject information promptly by mail or electronic transmittal at the request of any resident of the area where the mining is occurring or is proposed to occur, provided, that the division shall maintain for public inspection, at the division offices and on its Internet site, a description of the information available for mailing or electronic transmittal and the procedure for obtaining such information.

This Virginia regulation is amended to provide for electronic transmittal of information and the maintenance of the description of available information from the division offices and via the agency Internet site.

The Division has 2 offices located in the coalfield counties of Southwest Virginia which are readily available to the public and an Internet site to serve industry, other governmental agencies, and the public.

*14. 4VAC25–130–846.2. Definitions*

The corresponding Federal regulation for this section is 30 CFR 701.5.

The following revised definitions are being moved to § 4VAC25–130–700.5 Definitions.

*''Knowingly''* means that an individual knew or had reason to know in authorizing, ordering, or carrying out an act or omission on the part of a corporate permittee that such act or omission constituted a violation, failure, or refusal.

*''Violation, failure or refusal''* means:

(1) A violation of a condition of the permit issued pursuant to the Act and the regulations promulgated thereunder; or, (2) A failure or refusal to comply with any order issued under § 45.1–245 of the Act, or any order incorporated in a decision issued by the Director under the Act, except an order incorporated in a decision issued under § 45.1–246(B) of the Act.

*''Willfully''* means that an individual acted (1) either intentionally, voluntarily, or consciously, and (2) with intentional disregard or plain indifference to legal requirements in authorizing, ordering, or carrying out a corporate permittee's action or omission that constituted a violation, failure, or refusal.

## III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the submission satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Virginia program.

*Electronic or Written Comments*

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent Tribal or Federal laws or regulations, technical literature, or other relevant publications. We cannot ensure that comments received after the close

of the comment period (see **DATES**) or sent to an address other than those listed above (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

*Public Availability of Comments*

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may 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.

*Public Hearing*

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., local time, on September 15, 2008. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

*Public Meeting*

If there is limited interest in participation in a public hearing, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the submission, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will make a written summary of each meeting a part of the administrative record.

## IV. Procedural Determinations

*Executive Order 12630—Takings*

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

*Executive Order 12866—Regulatory Planning and Review*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

*Executive Order 12988—Civil Justice Reform*

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

*Executive Order 13132—Federalism*

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

*Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal program involving Indian Tribes.

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

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

*National Environmental Policy Act*

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute a major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

*Paperwork Reduction Act*

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

*Regulatory Flexibility Act*

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

upon the data and assumptions for the counterpart Federal regulations.

*Small Business Regulatory Enforcement Fairness Act*

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

*Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based on the analysis performed under various laws and executive orders for the counterpart Federal regulations.

**List of Subjects in 30 CFR Part 946**

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 24, 2008.

**Michael K. Robinson,**

*Acting Regional Director.*

[FR Doc. E8–20175 Filed 8–28–08; 8:45 am]

BILLING CODE 4310–05–P

# Notices

Federal Register
Vol. 73, No. 169
Friday, August 29, 2008

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

August 25, 2008.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**Animal and Plant Health Inspection Service**

*Title:* Phytosanitary Export Certification.

*OMB Control Number:* 0579–0052.

*Summary of Collection:* The Animal & Plant Health Inspection Service (APHIS) among other things provides export certification services to assure other countries that the plants and plant products they are receiving from the United States are free of plant pests specified by the receiving country. The Federal Plant Pest Act authorizes the Department to carry out this mission. APHIS will collect information using several forms.

*Need and Use of the Information:* APHIS will use the information collected to locate shipments, guide inspection, and issue a certificate to meet the requirements of the importing country. Failure to provide this information would have an impact on many U.S. exporters who would no longer be able to engage in the business of exporting plants and plant products overseas.

*Description of Respondents:* Business or other for-profit; State, Local or Tribal Government.

*Number of Respondents:* 14,900.

*Frequency of Responses:* Recordkeeping; Reporting: On occasion.

*Total Burden Hours:* 1,775,880.

**Animal Plant and Health Inspection Service**

*Title:* Foreign Animal Disease (Emerging Disease Investigation (FAD/ED) Database).

*OMB Control Number:* 0579–0071.

*Summary of Collection:* Title 7, U.S.C. 8301, The Animal Health Protection Act, authorizes the Secretary to prevent, control, and eliminate contagious, infectious, and communicable diseases. Through the Foreign Animal Disease Surveillance Program, the Animal and Plant Health Inspection Service (APHIS) compiles essential epidemiological and diagnostic data that are used to define foreign animal diseases (FAD) and their risk factors. The data is compiled through the Veterinary Services Emergency Management Response System, a Web-based database for reporting investigations of suspected FAD occurrences.

*Need and Use of the Information:* APHIS collects information such as the purpose of the diagnostician's visit to the site, the name and address of the owner/manager, the type of operation being investigated, the number of and type of animals on the premises, whether any animals have been moved to or from the premises and when this movement occurred, number of sick or dead animals, the results of physical examinations of the affected animals, the results of postmortem examinations, and the number and kinds of samples taken, and the name of the suspected disease. This information assists APHIS personnel in detecting and eradicating foreign animal disease incursions. Without the information, APHIS has no way to detect and monitor foreign animal disease outbreaks in the United States.

*Description of Respondents:* Farms; State, Local or Tribal Government.

*Number Of Respondents:* 2,640.

*Frequency Of Responses:* Reporting: On occasion.

*Total Burden Hours:* 2,640.

**Animal and Plant Health Inspection Service**

*Title:* ISA—Payment of Indemnity.

*OMB Control Number:* 0579–0192.

*Summary of Collection:* Federal regulation contained in 9 CFR Subchapter B governs cooperative programs to control and eradicate communicable diseases of livestock from the United States. Infectious Salmon Anemia (ISA) poses a substantial threat to the economic viability and sustainability of salmon aquaculture in the United States and abroad. ISA is the clinical disease resulting from infection with the ISA virus; signs include hemorrhaging, anemia, and lethargy. The Animal and Plant Health Inspection Service (APHIS) will collect information using VS Form 1–22 ISA Program Enrollment Form and VS Form 1–23 All Species Appraisal & Indemnity Claim Form.

*Need and Use of the Information:* Each program participant must sign an ISA Program Enrollment Form in which they agree to participate fully in USDA's and the State of Maine's ISA Program. APHIS will collect the owner's name and address, the number of fish for which the owner is seeking payment, and the appraised value of each fish. The owner must also certify as to whether the fish are subject to a

mortgage. Without the information it would be impossible for APHIS to launch its program to contain and prevent ISA outbreaks in the United States.

*Description of Respondents:* Business or other for-profit.

*Number of Respondents:* 2.

*Frequency of Responses:* Recordkeeping; Reporting: On occasion.

*Total Burden Hours:* 644.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. E8–20059 Filed 8–28–08; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

August 25, 2008.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**Farm Service Agency**

*Title:* Report of Acreage.

*OMB Control Number:* 0560–0004.

*Summary of Collection:* 7 U.S.C. 7333(b)(3) specifically requires, for crops and commodities covered by the Noninsured Crop Disaster Assistance Program (NAP), annual reports of acreage planted and prevented from being planted, as required by the Secretary, by the designated acreage reporting data for the crop and location as established by the Secretary. The report of acreage is conducted on an annual basis and is used by the Farm Service Agency (FSA) county offices to determine eligibility for benefits that are available to producers on the farm. Respondents must provide the information each year because variables such as previous year experience, weather occurrences and projections, market demand, new farming techniques and personal preferences affect the amount of land being farmed, the mix of crops planted, and the projected harvest. Prior year information is not sufficient on its own. Therefore, respondents must supply current data on a program year basis by the final reporting date established for their country to qualify for NAP assistance.

*Need and Use of the Information:* FSA will collect information verbally from the producers during visits to the county offices. FSA will collect one or more of the following data elements, as required: Crop planted, planting date, crop's intended use, type or variety, practice (irrigated or non-irrigated), acres, location of the crop (tract and field), and the producer's percent share in the crop along with the names of other producers having an interest in the crop. Once the information is collected and eligibility established, the information is used throughout the crop year to ensure the producer remains compliant with program provisions. If information is not reported, FSA has no basis to calculate APH, losses could not be determined, and information for crop insurance expansion could not be provided to RMA.

*Description of Respondents:* Individuals or households.

*Number of Respondents:* 291,500.

*Frequency of Responses:* Reporting: Annually.

*Total Burden Hours:* 619,438.

**Farm Service Agency**

*Title:* Offer Forms.

*OMB Control Number:* 0560–0177.

*Summary of Collection:* The Agricultural Trade Development and Assistance Act of 1954, as amended, (Title II, Pub. L. 480), Section 416(b) of the Agricultural Act of 1949, as amended (Section 416(b)), and the Food for Progress Act of 1985, as amended (for Food for Progress) authorizes International Procurement Division to procure, sell, and transport agricultural commodities, and obtain discharge/delivery survey information. Contractors, vendors, and steamship companies submit competitive offers for agricultural commodities and services. The Farm Service Agency (FSA) will collect information using several forms.

*Need and Use of the Information:* The information collected will enable Kansas City Commodity Office (KCCO) to evaluate offers impartially, purchase or sell commodities, and obtain services to meet domestic and export program needs. Without the information KCCO could not meet program requirements.

*Description of Respondents:* Business or other for-profit.

*Number of Respondents:* 949.

*Frequency of Responses:* Recordkeeping; Reporting: On occasion; Quarterly; Weekly; Semi-annually; Monthly; Annually; Other (Bi-weekly & Bi-monthly).

*Total Burden Hours:* 3,405.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. E8–20060 Filed 8–28–08; 8:45 am]

**BILLING CODE 3410–05–P**

## DEPARTMENT OF AGRICULTURE

### Cooperative State Research, Education, and Extension Service Solicitation of Input From Stakeholders Regarding the Establishment of the Agriculture and Food Research Initiative (AFRI)

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

**ACTION:** Notice of public meeting and request for stakeholder input.

**SUMMARY:** The Cooperative State Research, Education, and Extension Service (CSREES) is creating a new research, education, and extension program called the Agriculture and Food Research Initiative (AFRI). By this notice, CSREES is designated to act on behalf of the Secretary of Agriculture in soliciting public comment from interested persons regarding the implementing regulation to be developed for this new program as required under section 7406 of the

Food, Conservation, and Energy Act of 2008.

**DATES:** The meeting will be held on Wednesday, September 10, 2008, from 9:30 a.m. to 3 p.m. All comments must be received by close of business Wednesday, September 24, 2008, to be considered.

**ADDRESSES:** The meeting will be held in Room 1410 A/B/C/D; Waterfront Centre Building; Cooperative State Research, Education, and Extension Service; United States Department of Agriculture; 800 9th Street, SW.; Washington, DC 20024. Meeting participants will need to provide photo identification to be admitted to the building. Please allow sufficient time to go through security.

**FOR FURTHER INFORMATION CONTACT:** Ms. Terri Joya, (202) 401–1761 (phone), (202) 401–1782 (fax), or *tjoya@csrees.usda.gov.* You may submit comments, identified by CSREES–2008–0002 by any of the following methods:

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

*E-mail: afri@csrees.usda.gov.* Include CSREES–2008–0002 in the subject line of the message.

*Fax:* (202) 401–1782.

*Mail:* Paper, disk or CD–ROM submissions should be submitted to AFRI; Competitive Programs (CP) Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2240; 1400 Independence Avenue, SW.; Washington, DC 20250–2240.

*Hand Delivery/Courier:* AFRI; Competitive Programs (CP) Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 2457, Waterfront Centre; 800 9th Street, SW.; Washington, DC 20024.

*Instructions:* All submissions received must include the agency name and CSREES–2008–0002. All comments received will be posted to *http://www.regulations.gov,* including any personal information provided.

**SUPPLEMENTARY INFORMATION:**

## Additional Meeting and Comment Procedures

Because of the diversity of subjects, and to aid participants in scheduling their attendance, the following schedule is anticipated for the September 10, 2008, meeting:

9:30 a.m.–10 a.m.–Introduction to AFRI.

10 a.m.–3 p.m.–General administration of AFRI including solicitation of proposals, types of projects and awards, length of awards, evaluation criteria, and protocols to ensure the widest program participation. Allocation of funds including protocols to solicit and consider stakeholder input, determination of priority areas, and determination of activities to be supported—applied research, fundamental research, extension, education and integrated. A break is scheduled for 12 p.m. to 1 p.m.

Persons wishing to present oral comments at the September 10, 2008, meeting are requested to pre-register by contacting Ms. Terri Joya at (202) 401–1761, by fax at (202) 401–1782 or by e-mail to *tjoya@csrees.usda.gov.* Participants may reserve one 5-minute comment period. More time may be available, depending on the number of people wishing to make a presentation and the time needed for questions following presentations. Reservations will be confirmed on a first-come, first-served basis. All other attendees may register at the meeting. Written comments may also be submitted for the record at the meeting. All comments must be received by close of business Wednesday, September 24, 2008, to be considered. All comments and the official transcript of the meeting, when they become available, may be reviewed on the CSREES Web page for six months. Participants who require a sign language interpreter or other special accommodations should contact Ms. Joya as directed above.

## Background and Purpose

Section 7406 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246) amends subsection (b) of the Competitive, Special, and Facilities Research Grant Act (7 U.S.C. 450i(b)) to authorize the Secretary of Agriculture to establish a new competitive grant program to provide funding for fundamental and applied research, extension, and education to address food and agricultural sciences. Subject to the availability of appropriations to carry out this program, the Secretary may award grants to State agricultural experiment stations; colleges and universities; university research foundations; other research institutions and organizations; Federal agencies; national laboratories; private organizations or corporations; individuals; or any group consisting of two or more of the aforementioned entities. Grants shall be awarded to address priorities in United States agriculture in the following areas: (A) Plant health and production and plant products; (B) Animal health and production and animal products; (C) Food safety, nutrition, and health; (D) Renewable energy, natural resources, and environment; (E) Agriculture systems and technology; and (F) Agriculture economics and rural communities. To the maximum extent practicable, CSREES, in coordination with the Under Secretary for Research, Education, and Economics (REE), will make awards for high priority research, education, and extension, taking into consideration, when available, the determinations made by the National Agricultural Research, Extension, Education, and Economics Advisory Board. The authority to carry out this program has been delegated to CSREES through the Undersecretary for REE.

CSREES is holding a public meeting to obtain comments to use in developing the implementing rule for the new AFRI competitive grants program. The meeting is open to the public. Written comments and suggestions on issues that may be considered in the meeting may be submitted to the CSREES Docket Clerk at the address above.

## Summary of Agriculture and Food Research Initiative

The program authorizes for appropriation $700 million in grants for FY 2008–12, of which the Secretary may retain no more than 4% for administrative costs. Funds will be available for obligation for a two-year period beginning in the fiscal year for which funds are first made available. Grants will be awarded on the basis of merit, quality, and relevance and may have terms of up to 10 years.

Of the AFRI funds allocated to research activities, section 7406 directs 60 percent toward grants for fundamental (or basic) research, and 40 percent toward applied research. Of the AFRI funds allocated to fundamental research, not less than 30 percent of AFRI grants will be directed toward research by multidisciplinary teams. In addition, the law specifies that of the total amount appropriated for AFRI, not less than 30 percent is to be used for integrated programs.

## Implementation Plans

CSREES plans to consider stakeholder input received from this public meeting as well as other written comments in developing an implementing regulation for this program. CSREES anticipates releasing a Request for Applications (RFA) by mid-January 2009.

Done at Washington, DC, this 26th day of August 2008.

**Colien Hefferan,**

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

[FR Doc. E8–20146 Filed 8–28–08; 8:45 am]

**BILLING CODE 3410–22–P**

## DEPARTMENT OF AGRICULTURE

### Cooperative State Research, Education, and Extension Service

### Solicitation of Input From Stakeholders Regarding Implementation of the Veterinary Medicine Loan Repayment Program (VMLRP)

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

**ACTION:** Notice of public meeting and request for stakeholder input.

**SUMMARY:** The Cooperative State Research, Education, and Extension Service (CSREES) is soliciting stakeholder input on the implementation of the Veterinary Medicine Loan Repayment Program (VMLRP), which is authorized under section 1415A of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3151a). The purpose of this program is for the U.S. Department of Agriculture (USDA) to enter into agreements with veterinarians under which the veterinarians agree to provide, for a specific period of time as identified in the agreement, veterinary services in veterinarian shortage situations. As part of the stakeholder input process, CSREES is conducting a public meeting to solicit comments regarding the implementing regulations to be developed for this program.

**DATES:** The meeting will be held on Monday, September 15, 2008, from 9 a.m. to 3:30 p.m. All comments must be received by close of business Tuesday, September 30, 2008, to be considered.

**ADDRESSES:** The meeting will be held in room 1410B–C–D of the Waterfront Centre Building, Cooperative State Research, Education, and Extension Service, United States Department of Agriculture, 800 9th St., SW., Washington, DC 20024. Meeting participants will need to provide photo identification to be admitted to the building. Please allow sufficient time to go through security. You may submit comments, identified by CSREES–2008–0001, by any of the following methods:

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

*E-mail: vmlrp@csrees.usda.gov.* Include CSREES–2008–0001 in the subject line of the message.

*Fax:* 202–401–6156.

*Mail:* Paper, disk or CD–ROM submissions should be submitted to VMLRP, Plant and Animal Systems (PAS) Unit, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture; STOP 2220, 1400 Independence Avenue, SW., Washington, DC 20250–2220.

*Hand Delivery/Courier:* VMLRP; Plant and Animal Systems (PAS) Unit, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, Room 3153, Waterfront Centre, 800 9th Street, SW., Washington, DC 20024.

*Instructions:* All submissions received must include the agency name and CSREES–2008–0001. All comments received will be posted to *http://www.regulations.gov,* including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lisa Stephens, (202) 401–6438, or *lstephens@csrees.usda.gov.*

**SUPPLEMENTARY INFORMATION:**

### Additional Meeting and Comment Procedures

Because of the diversity of subjects, and to aid participants in scheduling their attendance, the following schedule is anticipated for the September 15, 2008, meeting:

9–9:30 a.m.—Introduction to VMLRP.

9:30–12 p.m.—Identification and prioritization of veterinarian shortage situations (e.g., geographically and by expertise).

1–3:30 p.m.—Administration of the VMLRP including eligible applicant criteria; number, size, and length of VMLRP agreements; solicitation for VMLRP applications; application prioritization and review; execution of VMLRP agreements, including service to the Federal government in emergency situations; agreement terms and conditions; reimbursement for tax liability; and monitoring and oversight of VMLRP agreements.

Persons wishing to present oral comments at this meeting are requested to pre-register by contacting Ms. Lisa Stephens at (202) 401–6438, by fax at (202) 401–6156 or by e-mail to *lstephens@csrees.usda.gov.* Participants may reserve one 5-minute comment period per topic area, and should indicate the topic area(s) for which they are registering (i.e., identification of veterinarian shortage situations and/or administration of the VMLRP). For any participant who may require only one 5-minute period to fully present testimony regarding both topic areas, the participant should indicate this intention and may reserve their 5-minute comment period under one of the two topic areas. More time may be available, depending on the number of people wishing to make a presentation and the time needed for questions following presentations. Reservations will be confirmed on a first-come, first-served basis. All other attendees may register at the meeting. Written comments may also be submitted for the record at the meeting. All comments must be received by close of business Tuesday, September 30, 2008, to be considered. All comments and the official transcript of the meeting, when they become available, may be reviewed on the CSREES Web page for six months. Participants who require a sign language interpreter or other special accommodations should contact Ms. Stephens as directed above.

### Background and Purpose

In December, 2003, the National Veterinary Medical Service Act (NVMSA) was passed into law adding section 1415a to the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA). This law established a new Veterinary Medicine Loan Repayment Program (7 U.S.C. 3151a) authorizing the Secretary of Agriculture (secretary) to carry out a program of entering into agreements with veterinarians under which they agree to provide veterinary services in veterinarian shortage situations. In November 2005, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006 (Pub. L. 109–97), appropriated $495,000 (after the 1 percent rescission) for CSREES to implement the Veterinary Medicine Loan Repayment Program and represented the first time funds had been appropriated for this program. In February 2007, the Revised Continuing Appropriations Resolution, 2007 (Pub. L. 110–5), appropriated an additional $495,000 to CSREES for support of the program, and in December 2007, the Consolidated Appropriations Act, 2008 (Pub. L. 110–161), appropriated an additional $868,875 (after the .7 percent rescission) to CSREES for support of this program. Consequently, there is approximately $1.8 million available for CSREES to administer this program.

As enacted on June 18, 2008, section 7105 of the Food, Conservation, and Energy Act of 2008 (FCEA) amended section 1415A to revise the determination of veterinarian shortage situations to consider (1) geographical areas that the Secretary determines have

a shortage of veterinarians; and (2) areas of veterinary practice that the Secretary determines have a shortage of veterinarians, such as food animal medicine, public health, epidemiology, and food safety. This section also added that priority should be given to agreements with veterinarians for the practice of food animal medicine in veterinarian shortage situations.

Section 1415A of the NARETPA requires the Secretary, when determining the amount of repayment for a year of service by a veterinarian, to consider the extent to which such determination affects the ability of USDA to maximize the number of agreements from the amounts appropriated and provides an incentive to serve in veterinary service shortage areas with the greatest need. This section also provides that loan repayments may consist of payments of the principal and interest on government and commercial loans received by the individual for the attendance of the individual at an accredited college of veterinary medicine resulting in a degree of Doctor of Veterinary Medicine or the equivalent. Loans eligible for repayment include loans for tuition expenses; other reasonable educational expenses, including fees, books, and laboratory expenses, incurred by the individual; or reasonable living expenses as determined by the Secretary. In addition, the Secretary is directed to make such additional payments to participants as the Secretary determines appropriate for the purpose of providing reimbursements to participants for individual tax liability resulting from participation in this program. Finally, this section requires USDA to promulgate regulations within 270 days of the enactment of FCEA. The Secretary delegated the authority to carry out this program to CSREES.

CSREES is holding a public meeting to obtain comments to use in developing the proposed regulations for the VMLRP. The meeting is open to the public. Written comments and suggestions on issues that may be considered during the meeting may be submitted to the CSREES Docket Clerk at the address above.

**Implementation Plans**

To meet the legislatively-mandated date to promulgate regulations (i.e., within 270 days of enactment or March 14, 2009), CSREES plans to promulgate two regulations: Determination of Veterinary Shortage Situations for the Veterinary Medicine Loan Repayment Program; and Veterinary Medicine Loan Repayment Program (VMLRP)—Administrative Provisions. CSREES plans to release a Solicitation for VMLRP Applications by May 31, 2009.

Done at Washington, DC, this 26th day of August 2008.

**Colien Hefferan,**

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

[FR Doc. E8–20144 Filed 8–28–08; 8:45 am]

BILLING CODE 3410–22–P

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## DEPARTMENT OF AGRICULTURE

### Forest Service

### Cibola National Forest; New Mexico; McKinley County Easement for Forest Roads 191 and 191D

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Department of Agriculture, Forest Service has initiated the process to prepare an Environmental Impact Statement (EIS) for a road easement issuance to McKinley County for Forest Roads (FRs) 191 and 191D. The proposed action would grant an easement to McKinley County for FRs 191 and 191D and reassign an existing easement (dated December 21, 2001, from David Polich *et al.*) to the Forest Service across private land within Section 9, T 13 N, R 16 W, NMPM to McKinley County. The granting of the right-of-way allows McKinley County to upgrade the roads and take over their maintenance. The upgrade would make these portions of FR 191 and FR191D, approximately 2.78 miles, all-weather roads.

**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 March, 2009.

**ADDRESSES:** Send written comments to Nancy Rose, Forest Supervisor, Cibola National Forest, 2113 Osuna Road NE, Albuquerque, NM 87113, or fax (505) 346–3901. Copies of the proposed action, project location map, or the Environmental Impact Statement, when available, may be obtained from the Cibola National Forest, 2113 Osuna Road, NE, Albuquerque, NM 87110–1001; or from the Mount Taylor Ranger District Office (Cibola NF), 1800 Lobo Canyon Road, Grants, NM 87020 or electronically from the Forest Service Web site at *http://www.fs.fed.us/r3/cibola/projects/nepa_reports.shtml*.

**FOR FURTHER INFORMATION CONTACT:** For further information, mail correspondence to Keith Baker, NEPA Coordinator, Cibola National Forest, 2113 Osuna Road NE, Albuquerque, NM 87113–1001 or phone (505) 346–3820.

**SUPPLEMENTARY INFORMATION:**

**Purpose and Need for Action**

There is a need to provide for public safety and adequate access to private inholdings. The desired condition is to have FR191 and FR191D under a County easement. This would allow McKinley County to upgrade FR191D to County ''B–2'' type road standards, with an aggregate surface in place of a paved surface. An upgrade of this nature would make FR191D an all-weather road but maintain it as a rural road. It would also place these roads under McKinley County jurisdiction, which would be appropriate due the existing and anticipated traffic type and volume from the private landowners who live in the area and use the road. The current road condition limits access for public services, such as school buses and fire and emergency service vehicles to reach these people. An improved, all-weather road would allow safe, year-round access for the people living on private land and provide access for public services and emergency service vehicles.

**Proposed Action**

The U.S. Forest Service, Cibola National Forest, Mount Taylor Ranger District proposes to grant an easement to McKinley County for access across forest lands and transfer an existing Forest Service easement across private land to the County. The right-of-way would be 2.78 miles long and 66 feet wide, covering approximately 22 acres. About 2.23 miles of the roads are on national forest lands. About one-quarter mile of the easement would be on FR 191 from its intersection with New Mexico State Highway 400 to the intersection of FR191D. The remaining 2.53 miles would be on FR191D from its intersection with FR191 to private land.

**Responsible Official**

The responsible official is Nancy Rose, Forest Supervisor, Cibola National Forest Supervisor's Office, 2113 Osuna Road NE., Albuquerque, NM 87113–1001.

**Nature of Decision To Be Made**

The decision to be made is whether to implement the proposed action as described above, to vary the design of the proposed action to meet the purpose and need through some other combination of activities, or to take no action at this time.

**Scoping Process**

The Council on Environmental Quality (CEQ) emphasizes an early and open process for determining the scope of issues to be addressed and for identifying significant issues related to the proposed action. To meet the intent of the CEQ regulations, the Cibola National Forest will do the following to ensure early and open public involvement: (1) Include the proposed action on the list of projects for annual tribal consultation and address concerns identified during tribal consultation as part of the analysis, (2) submit the proposed action to the public during scoping, and request comments or issues (points of dispute, debate, or disagreement) regarding the potential effects, (3) include the proposal on the Cibola National Forest Schedule of Proposed Actions quarterly report, (4) use comments received to determine significant issues and additional alternatives to address within the analysis, (5) consult with the U.S. Fish and Wildlife Service and the State Historical Preservation Office regarding potential effects to listed species and heritage sites as needed, and (6) prepare and distribute a draft environmental impact statement for a 45-day public comment period. No public meeting is planned.

**Preliminary Issues**

One preliminary issue has been identified. The project and other actions in the area could affect habitat for the Zuni bluehead sucker, a New Mexico state-endangered fish, which exists downstream from the project area.

**Comment Requested**

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. Comments should be focused on the nature of the action proposed and should be relevant to the decision under consideration. Comments received from the public will be evaluated for significant issues and used to assist in the development of additional alternatives, if any.

*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 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: August 19, 2008.

**Nancy Rose,**

*Forest Supervisor, Cibola National Forest.*

[FR Doc. E8–20105 Filed 8–28–08; 8:45 am]

BILLING CODE 3410–11–P

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Clarification of Scope of Procurement List Additions; 2008 Commodities Procurement List; Quarterly Update of the A-List and Movement of Products Between the A-List, B-List and C-List

**AGENCY:** Committee for Purchase from People Who Are Blind or Severely Disabled.

**ACTION:** Publication of the quarterly update of the A-list and movement of products between the A-list, B-list and C-list as of October 1, 2008.

**SUMMARY:** The Committee for Purchase From People Who Are Blind or Severely Disabled, in accordance with the procedures published on December 1, 2006 (71 FR 69535–69538), has updated the scope of the Program's procurement preference requirements for the products listed below between and among the Committee's A-list, B-list and C-list. A-list products are suitable for the Total Government Requirement as aggregated by the General Services Administration, the B-list are those products suitable for the Broad Government Requirement as aggregated by the General Services Administration, and C-list products are suitable for the requirements of one or more specified agency(ies). The lists below track changes to A-, B-, C-designations that occurred between May 28, 2008 and August 29, 2008.

**DATES:** The effective date for the quarterly update of the A-list and movement of products between and among the A-list, B-list and C-list is October 1, 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:** Emily A. Covey, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *cmtefedreg@jwod.gov*.

*Products moved from B-list to A-list:*
None.

*Products moved from C-list to A-list:*
None.

*Products moved from A-list to B-list:*
None.

*Products moved from A-list to C-list:*
None.

*Products moved from B-list to C-list:*
None.

*Products moved from C-list to B-list:*
3M Skilcraft Easy Scrub Flat Mop -16″ w/ pad hold, 7920–00–NIB–0470.
3M Skilcraft Easy Scrub Flat Mop 18″ pads, 7920–00–NIB–0471 (White), 7920–00-

NIB–0472 (Blue), 7920–00-NIB–0473 (Red), 7920–00–NIB–0474 (Green).

The complete A-list is available at http://www.jwod.gov/jwod/p_and_s/alist2007.htm.

**Kimberly M. Zeich,**

*Director, Program Operations.*

[FR Doc. E8–20151 Filed 8–28–08; 8:45 am]

BILLING CODE 6353–01–P

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Additions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed Additions to 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.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** September 28, 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 Procurement List for production by the nonprofit agencies listed:

*Services*

*Service Type/Location:* Base Supply Center, NAS Patuxent River, Patuxent River, MD.
*NPA:* Industries for the Blind, Inc., West Allis, WI.
*Contracting Activity:* Department of the Navy, Fleet and Industrial Supply Center (FISC), Norfolk, VA.
*Service Type/Location:* Base Supply Center, Fort Sam Houston, 2101 7th St Bldg 4197, Fort Sam Houston, TX.
*NPA:* San Antonio Lighthouse for the Blind, San Antonio, TX.
*Contracting Activity:* Department of the Army, Fort Sam Houston, TX.

**Kimberly M. Zeich,**

*Director, Program Operations.*

[FR Doc. E8–20149 Filed 8–28–08; 8:45 am]

BILLING CODE 6353–01–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 services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**DATES:** *Effective Date:* September 28, 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 June 20 and June 27, 2008, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (73 FR 35119; 36492) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

### Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. 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.

### End of Certification

*Accordingly, the following services are added to the Procurement List:*

**Services**

*Service Type/Location:* Vehicle Maintenance Services, Aberdeen Proving Ground, 4118 Susquehanna Ave, Aberdeen, MD.
*NPA:* PRIDE Industries, Roseville, CA.
*Contracting Activity:* General Services Administration, Federal Supply Service, Region 3 (3FPU), Philadelphia, PA.
*Service Type/Location:* Custodial Services, U.S. Coast Guard, Industrial Support Detachment (ISD) Building, 110 Mount Elliott Street, Detroit, MI.
*NPA:* New Horizons Rehabilitation Services, Inc., Auburn Hills, MI.
*Contracting Activity:* Department of Homeland Security, U.S. Coast Guard—Integrated Support Command (ISC), Cleveland, OH.
*Service Type/Location:* Medical Transcription, VA Southern Nevada Healthcare System, 2455 West Cheyenne

Avenue, Las Vegas, NV.
*NPA:* National Telecommuting Institute, Inc., Boston, MA.
*Contracting Activity:* Department of Veterans Affairs, VISN 22 Network Business Center, Long Beach, CA.
*Service Type/Location:* Custodial Services, Grand Prairie Army Reserve Complex, Buildings 7900; 8070 and 8100, Grand Prairie, TX.
*NPA:* Goodwill Industrial Services of Fort Worth, Inc., Fort Worth, TX.
*Contracting Activity:* Army Reserve Contracting Center, 90th Regional Support Command, North Little Rock, AR.
*Service Type/Location:* Warehousing & Distribution Service, Naval Base Kitsap—Fleet and Industrial Supply Center (FISC), Bremerton, WA.
*Service Type/Location:* Warehousing & Distribution Service, Navy Undersea Warfare Center (NUWC) Division, Keyport, WA.
*Service Type/Location:* Warehousing & Distribution Service, Puget Sound Naval Shipyard (PSNS) and Intermediate Maintenance Facility (IMF) Submarine Base, Bangor, WA.
*NPA:* Skookum Educational Programs, Bremerton, WA.
*Contracting Activity:* Fleet and Industrial Supply Center, Bremerton, WA.
*Service Type/Location:* Janitorial Services at Army/Navy Recruiting Office, Recruiting Station Army/Navy, 98–151 Pali Momi Street, Aiea, HI.
*Service Type/Location:* Janitorial Services at Air Force/Marine Corps Recruit, Recruiting Station 2, Air Force/Marine Corps, 98–151 Pali Momi Street, Aiea, HI.
*Service Type/Location:* Janitorial Services at Air Force Reserve Center, Recruiting Station 3 Air Force Reserve Center, 98–145 Kaonohi Street, Aiea, HI.
*Service Type/Location:* Janitorial Service at Army/Navy/Marines/AF Recruiting, Recruiting Station 4 Army/Navy/Marines/AF, 45–480 Kaneohe Bay Drive, Kaneohe, HI.
*Service Type/Location:* Janitorial Services at Army Recruiting Office, Recruiting Station 5 Army, 95–1249 Meheula Parkway, Mililani, HI.
*NPA:* Goodwill Contract Services of Hawaii, Inc., Honolulu, HI.
*Contracting Activity:* U.S. Army Engineering Division, Contracting Division, Honolulu, HI.

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. E8–20150 Filed 8–28–08; 8:45 am]
BILLING CODE 6353–01–P

## COMMISSION ON CIVIL RIGHTS

### Sunshine Act Notice

**AGENCY:** United States Commission on Civil Rights.

**ACTION:** Notice of meeting.

Date and Time: Saturday, September 6, 2008; 11 a.m.

Place: Via Teleconference, Public Dial In—1–800–597–7623. Conference ID# 62348365.

**Meeting Agenda**

I. Approval of Agenda
II. Program Planning
- Consideration of FY 2010 Budget Estimate to OMB

III. Future Agenda Items
IV. Adjourn

**FOR FURTHER INFORMATION CONTACT:** Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8582.

Dated: August 27, 2008.

**David Blackwood,**
*General Counsel.*
[FR Doc. E8–20254 Filed 8–27–08; 4:15 pm]
BILLING CODE 6335–01–P

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Transportation and Related Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

The Transportation and Related Equipment Technical Advisory Committee will meet on September 11, 2008, 9:30 a.m., in the Herbert C. Hoover Building, Room 6087B, l4th Street between Constitution & Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to transportation and related equipment or technology.

**Public Session**

1. Welcome and introductions.
2. Review status of working groups.
3. Comments from the Public.

**Closed Session**

4. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yspringer@bis.doc.gov* no later than September 4, 2008.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via e-mail.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on July 17, 2008, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 §§ (10)(d)), that the portion of the meeting dealing with matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)1 and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: August 25, 2008.

**Yvette Springer,**
*Committee Liaison Officer.*
[FR Doc. E8–20180 Filed 8–28–08; 8:45 am]
BILLING CODE 3510–JT–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–928]**

### Postponement of Final Determination of Antidumping Duty Investigation: Uncovered Innerspring Units from the People's Republic of China

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** August 29, 2008.

**FOR FURTHER INFORMATION CONTACT:** Erin Begnal or Susan Pulongbarit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1442 or (202) 482–4031, respectively.

**Postponement of Final Determination**

On January 22, 2008, the Department of Commerce (''Department'') initiated

the antidumping duty investigation of uncovered innersprings units (''innersprings'') from the People's Republic of China (''PRC''). *See Uncovered Innerspring Units From the People's Republic of China, South Africa, and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations*, 73 FR 4817 (January 28, 2008) (''*Initiation Notice*''). On August 6, 2008, the Department published the *Preliminary Determination* in the antidumping duty investigation of innersprings from the PRC. *See Uncovered Innerspring Units from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 45729 (August 6, 2008) (''*Preliminary Determination*''). The *Preliminary Determination* stated that the Department would make its final determination for this antidumping duty investigation no later than 75 days after the date of the preliminary determination.

Section 735(a)(2) of the Tariff Act of 1930, as amended, (''Act'') provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by petitioner. In addition, the Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four–month period to not more than six months. *See* 19 CFR 351.210(e)(2).

On August 12, 2008, Nanhai Animal By–Products Imp. & Exp. Co., Ltd. (''Nanhai Animal'') and Foshan Jingxin Steel Wire & Spring Co., Ltd. (''Foshan Jingxin'')[1] requested a 60–day extension of the final determination and extension of the provisional measures. Thus, because our preliminary determination is affirmative, and the respondents requesting an extension of the final determination and an extension of the provisional measures account for a significant proportion of exports of the subject merchandise, and no compelling reasons for denial exist, we are extending the due date for the final determination to no later than 135 days after the date of the publication of the preliminary determination. For the reasons identified above, we are postponing the final determination from October 13, 2008, until December 19, 2008.

This notice is issued and published pursuant to sections 777(i) and 735(a)(2) of the Act and 19 CFR 351.210(g).

Dated: August 22, 2008.

**David M. Spooner,**

*Assistant Secretaryfor Import Administration.*

[FR Doc. E8–20154 Filed 8–28–08; 8:45 am]

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[1] In the *Preliminary Determination*, the Department determined that Foshan Jingxin should be considered the seller of the subject merchandise for purposes of calculating a dumping margin, and changed the designation of the mandatory respondent to Foshan Jingxin from Nanhai Animal. *See Preliminary Determination* 73 FR at 45732.

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–890]**

### Wooden Bedroom Furniture from the People's Republic of China: Notice of Extension of Time Limit for Final Results of New Shipper Reviews

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** August 29, 2008.

**FOR FURTHER INFORMATION CONTACT:** Paul Stolz, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4474.

**SUPPLEMENTARY INFORMATION:**

#### Background

On June 6, 2008, the Department of Commerce (''the Department'') published the preliminary results of the new shipper reviews of the antidumping duty order on wooden bedroom furniture from the People's Republic of China, covering the period January 1, 2007, through July 1, 2007, and the following exporters: Dongguan Mu Si Furniture Co., Ltd. (''Mu Si'') and Dongguan Bon Ten Furniture Co., Ltd. *See Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results of January 1, 2007 July 1, 2007 Semi–Annual New Shipper Reviews*, 73 FR 32292 (June 6, 2008) (''*Preliminary Results*''). The final results are currently due on August 25, 2008.

#### Extension of Time Limits for Final Results

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.214(i)(1) require the Department to issue the final results of a new shipper review within 90 days after the date on which the preliminary results were issued. The Department may, however, extend the 90-day period for completion of the final results of a new shipper review to 150 days if it determines that the case is extraordinarily complicated. *See* section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2).

As a result of issues raised in these new shipper reviews, specifically Mu Si and Petitioners have raised multiple issues with regard to certain consumption factor(s), average unit values of certain surrogate values, and conversion factors in their respective case briefs, the Department determines that these new shipper reviews are extraordinarily complicated and it cannot complete these new shipper reviews within the current time limit. Accordingly, the Department is extending the time limit for the completion of the final results by 60 days until October 24, 2008, in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2).

We are issuing and publishing this notice in accordance with section 751(2)(B) and 777(i)(1) of the Act.

Dated: August 22, 2008.

**Edward C. Yang,**

*Acting Deputy Assistant Secretaryfor Import Administration.*

[FR Doc. E8–20157 Filed 8–28–08; 8:45 am]

BILLING CODE 3510–DS–S

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–549–822]**

### Certain Frozen Warmwater Shrimp From Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On March 6, 2008, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain frozen warmwater shrimp (shrimp) from Thailand. This review covers 45 [1] producers/exporters of the subject merchandise to the United States. The period of review (POR) is February 1, 2006, through January 31, 2007. We are rescinding the review with respect to

[1] This figure does not include those companies for which the Department is rescinding the administrative review.

three companies because these companies had no shipments of subject merchandise during the POR.

Based on our analysis of the comments received, we have made certain changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled ''Final Results of Review.''

**EFFECTIVE DATE:** August 29, 2008.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Eastwood, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3874.

**SUPPLEMENTARY INFORMATION:**

## Background

This review covers 45 producers/exporters.[2] The respondents which the Department selected for individual examination are Andaman Seafood Co., Ltd., Chanthaburi Frozen Food Co., Ltd. (CFF), Chanthaburi Seafoods Co., Ltd., Euro-Asian International Seafoods Co., Ltd., Intersia Foods Co., Ltd. (Intersia Foods) (formerly Y2K Frozen Foods Co., Ltd. (Y2K Frozen Foods)), Phattana Seafood Co., Ltd., Phattana Frozen Food Co., Ltd., S.C.C. Frozen Seafood Co., Ltd., Seawealth Frozen Food Co., Ltd., Thailand Fishery Cold Storage Public Co., Ltd., Thai International Seafoods Co., Ltd., and Wales & Co. Universe Limited (collectively ''the Rubicon Group''); Pakfood Public Company Limited and its affiliated subsidiaries, Asia Pacific (Thailand) Company Limited, Chaophraya Cold Storage Company Limited, Okeanos Company Limited, and Takzin Samut Company Limited (collectively ''Pakfood''); Thai I-Mei Frozen Foods Co., Ltd. (Thai I-Mei); and Thai Union Frozen Products Public Co., Ltd. (TUF), Thai Union Seafood Co., Ltd. (TUS) (collectively ''Thai Union''). The respondents which were not selected for individual examination are listed in the ''Final Results of Review'' section of this notice.

On March 6, 2008, the Department published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on shrimp from Thailand. *See Certain Frozen Warmwater Shrimp from Thailand: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review,* 73 FR 12089 (Mar. 6, 2008) (*Preliminary Results*).

We invited parties to comment on our preliminary results. In April 2008, we received case briefs from the petitioner (*i.e.*, the Ad Hoc Shrimp Trade Action Committee), the Louisiana Shrimp Association (LSA), Pakfood, the Rubicon Group, Thai I-Mei, and Thai Union. Also in April 2008, we received rebuttal briefs from each of these parties except the LSA. We also received comments on the preliminary results from the following interested parties: Asian Seafoods Coldstorage Public Co., Ltd., Kitchens of the Oceans (Thailand), Ltd., The Siam Union Frozen Foods Co., Ltd., Thai Royal Frozen Food Co., Ltd., The Union Frozen Products Co., Ltd., Good Fortune Cold Storage Co., Ltd., Kingfisher Holdings Ltd., Transamut Food Co., Ltd., Seafresh Industry Public Co., Ltd., and Tey Seng Cold Storage Co., Ltd. The Department convened a hearing in this review on June 18, 2008.

The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

## Scope of the Order

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,[3] deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the Penaeidae family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannemei*), banana prawn (*Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this order. In addition, food preparations, which are not ''prepared meals,'' that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this order.

*Excluded from the scope are:* (1) Breaded shrimp and prawns (HTSUS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTSUS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); (7) certain dusted shrimp; and, (8) certain battered shrimp. Dusted shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a ''dusting'' layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and, (5) that is subjected to IQF freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this order are currently classified under the following HTSUS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.

## Period of Review

The POR is February 1, 2006, through January 31, 2007.

[2] This figure does not include those companies for which the Department is rescinding the administrative review.

[3] ''Tails'' in this context means the tail fan, which includes the telson and the uropods.

**Partial Rescission of Review**

In February 2007, the Department received timely requests, in accordance with 19 CFR 351.213(b)(1), from the petitioner and the LSA to conduct a review of Lucky Union Foods Co., Ltd. (Lucky Union), Songkla Canning PCL (Songkla), and Thai Union Manufacturing Co., Ltd. (Thai Union Manufacturing), which are affiliated with Thai Union, a respondent in this review. The Department initiated a review of these three companies and requested that they supply data on the quantity and value of their exports of shrimp during the POR. On April 23, 2007, Thai Union submitted a response to the Department's quantity and value (Q&V) questionnaire, in which it indicated that only two of its companies, TUF and TUS, exported subject merchandise to the United States during the POR, while Lucky Union, Songkla, and Thai Union Manufacturing did not produce or export frozen shrimp to the United States during the POR. We confirmed this information at Thai Union's sales verification. *See* Memorandum to the File from Irina Itkin and Brianne Riker entitled, ''Verification of the Sales Response of Thai Union Frozen Products Public Co., Ltd./Thai Union Seafood Co., Ltd. in the Antidumping Administrative Review of Certain Frozen Warmwater Shrimp from Thailand'' (''Thai Union Verification Report''), dated February 13, 2008, at 3 and 10. Therefore, because Lucky Union, Songkla, and Thai Union Manufacturing had no shipments of subject merchandise to the United States during the POR, in accordance with 19 CFR 351.213(d)(3), and consistent with the Department's practice, we are rescinding our review with respect to them. *See, e.g., Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 72 FR 52065, 52067 (Sept. 12, 2007) (*04–06 Thai Shrimp Final Results*); *Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination To Revoke in Part,* 70 FR 67665, 67666 (Nov. 8, 2005).

**Successor-in-Interest**

As noted in the *Preliminary Results,* in April 2007 the Rubicon Group informed the Department that its affiliated producer Y2K Frozen Foods is now doing business under the name Intersia Foods. Based on the Rubicon Group's submissions addressing the four factors with respect to this change in corporate structure (*i.e.*, management, production facilities for the subject merchandise, supplier relationships, and customer base),[4] in the preliminary results we found that this company's organizational structure, management, production facilities, supplier relationships, and customers have remained essentially unchanged. Further, we found that Intersia Foods operates as the same business entity as Y2K Frozen Foods with respect to the production and sale of shrimp. Therefore, we preliminarily determined that Intersia Foods is the successor-in-interest to Y2K Frozen Foods. *See Preliminary Results,* 73 FR at 12090.

Since the preliminary results, no party to this proceeding has commented on this issue, and we have received no new information with respect to this issue. As a result, we continue to find that Intersia Foods is the successor-in-interest to Y2K Frozen Foods.

**Application of Weighted-Average Margin to I.T. Foods**

In its April 24, 2007, response to the Q&V questionnaire, I.T. Foods claimed that it had no shipments or entries of subject merchandise into the United States during the POR. However, when we attempted to confirm this claim with data obtained from CBP, we found that there were entries of merchandise into the United States produced and/or exported by I.T. Foods that appeared to be within the scope of the antidumping duty order. *See* Memorandum to the File from Brianne Riker entitled, ''2006–2007 Administrative Review of Certain Frozen Warmwater Shrimp from Thailand: Entry Documents from U.S. Customs and Border Protection,'' dated June 12, 2007. Therefore, on July 16, 2007, we requested information from I.T. Foods to explain this discrepancy.

On August 16, 2007, I.T. Foods provided information to the Department indicating that it did, in fact, have reportable transactions of subject merchandise during the POR of ''tiny shrimp.''

*See* Letter to the Department from I.T. Foods, dated August 16, 2007. Therefore, we did not rescind the administrative review with respect to this company and are assigning to it the weighted-average margin calculated for the companies selected for individual examination because, based on its response: (1) The discrepancy between the Q&V questionnaire response and the CBP data appeared to be an inadvertent oversight; (2) the quantity of the exports in question was so small that it would not have had an impact on our selection of respondents; and (3) the company has been responsive to our requests for information. We will instruct CBP to assess antidumping duties on I.T. Foods' entries of subject merchandise at the weighted-average rate.

In addition, based on the information provided by I.T. Foods, we also have determined certain other merchandise produced/exported by I.T. Foods (*i.e.*, ''shrimp balls'') that entered the United States during the POR is not subject to the scope of the order because the shrimp content of this product is limited to shrimp flavoring. *See* Letter to the Department from I.T. Foods, dated August 16, 2007. Therefore, we will instruct CBP to liquidate I.T. Foods' entries of non-subject merchandise (*i.e.*, ''shrimp balls'') without regard to antidumping duty liability.

**Facts Available**

In the preliminary results, we determined that, in accordance with section 776(a)(2)(A) of the Act, the use of facts available was appropriate as the basis for the dumping margins for certain producer/exporters. *See Preliminary Results*, 73 FR at 12091–92. Section 776(a) of the Act provides that the Department will apply ''facts otherwise available'' if, *inter alia*, necessary information is not available on the record or an interested party: (1) Withholds information that has been requested by the Department; (2) fails to provide such information within the deadlines established, or in the form or manner requested by the Department; (3) significantly impedes a proceeding; or (4) provides such information, but the information cannot be verified.

*A. Companies That Failed To Respond to the Q&V Questionnaire*

In April 2007, the Department requested that all companies subject to the review respond to the Department's Q&V questionnaire for purposes of mandatory respondent selection. The original deadline to file a response was April 23, 2007. Of the 142 companies subject to this review, 60 companies did not respond to the Department's initial request for information. Subsequently in May and June 2007, the Department issued two letters to these companies affording them additional opportunities to submit a response to the Department's Q&V questionnaire.

[4] *See Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada,* 70 FR 50299, 50300–01 (Aug. 26, 2005) (setting forth the four factors to be considered for successorship determinations), unchanged in *Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada,* 70 FR 59721 (Oct. 13, 2005).

However, 12 of these companies also failed to respond to the Department's additional Q&V questionnaires.[5] On July 19, 2007, the Department placed documentation on the record confirming delivery of the questionnaires to each company. *See* Memorandum to the File from Brianne Riker entitled, ''Placing Delivery Information on the Record of the 2006–2007 Antidumping Duty Administrative Review on Certain Frozen Warmwater Shrimp from Thailand,'' dated July 19, 2007. By failing to respond to the Department's Q&V questionnaire, these companies withheld requested information and significantly impeded the proceeding. Thus, pursuant to sections 776(a)(2)(A) and (C) of the Act, because these companies did not respond to the Department's questionnaire, the Department preliminarily found that the use of total facts available is warranted.

By failing to respond to the Department's requests, the above-mentioned companies withheld requested information and significantly impeded the proceeding. Therefore, as in the preliminary results, the Department finds that the use of total facts available for Applied DB, Chonburi LC, Haitai, High Way International, Merkur, Ming Chao, Nongmon, SCT, Search and Serve, Shianlin Bangkok, Star Frozen Foods, and Wann Fisheries is appropriate pursuant to sections 776(a)(2)(A) and (C) of the Act. *See Preliminary Results*, 73 FR at 12091–92.

According to section 776(b) of the Act, if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available. *See Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025–26 (Sep. 13, 2005); *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (Aug. 30, 2002). Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103–316, Vol. 1, at 870 (1994) (*SAA*), reprinted in 1994 U.S.C.C.A.N. 4040, 4198–99. Furthermore, ''affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.'' *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997); *see also Nippon Steel Corp.* v. *United States*, 337 F.3d 1373, 1382–83 (Fed. Cir. 2003) (*Nippon*). We find that Applied DB, Chonburi LC, Haitai, High Way International, Merkur, Ming Chao, Nongmon, SCT, Search and Serve, Shianlin Bangkok, Star Frozen Foods, and Wann Fisheries did not act to the best of their abilities in this proceeding, within the meaning of section 776(b) of the Act, because they failed to respond to the Department's requests for information and provide timely information. Therefore, an adverse inference is warranted in selecting from the facts otherwise available with respect to these companies. *See Nippon*, 337 F.3d at 1382–83.

Section 776(b) of the Act provides that the Department may use as adverse facts available (AFA) information derived from: (1) The petition; (2) the final determination in the investigation; (3) any previous review; or (4) any other information placed on the record.

The Department's practice, when selecting an AFA rate from among the possible sources of information, has been to ensure that the margin is sufficiently adverse ''as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See, e.g., 04–06 Thai Shrimp Final Results; Certain Steel Concrete Reinforcing Bars from Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082, 65084 (Nov. 7, 2006).

In order to ensure that the margin is sufficiently adverse so as to induce cooperation, we have assigned a rate of 57.64 percent, which is the highest rate alleged in the petition, as adjusted at the initiation of the less-than-fair-value (LTFV) investigation, to the non-responsive companies (*i.e.*, Applied DB, Chonburi LC, Haitai, High Way International, Merkur, Ming Chao, Nongmon, SCT, Search and Serve, Shianlin Bangkok, Star Frozen Foods, and Wann Fisheries). *See Notice of Initiation of Antidumping Duty Investigations: Certain Frozen and Canned Warmwater Shrimp From Brazil, Ecuador, India, Thailand, the People's Republic of China and the Socialist Republic of Vietnam*, 69 FR 3876, 3881 (Jan. 27, 2004). The Department believes that this rate is sufficiently high as to effectuate the purpose of the facts available rule (*i.e.*, we find that this rate is high enough to encourage participation in future segments of this proceeding in accordance with section 776(b) of the Act).

For the reasons stated in the *Preliminary Results*, we continue to find that the information upon which this margin is based has probative value and thus satisfies the corroboration requirements of section 776(c) of the Act. *See Preliminary Results*, 73 FR at 12092. *See also* Memorandum from Elizabeth Eastwood to the File, entitled ''Corroboration of Adverse Facts Available Rate for the Final Preliminary Results in the 2006–2007 Antidumping Duty Administrative Review on Certain Frozen Warmwater Shrimp from Thailand,'' dated August 25, 2008. We note that the company-specific margins calculated for the final results continue to corroborate this margin.

*B. Thai Union*

We preliminarily determined that it was appropriate to use facts available for certain of Thai Union's U.S. sales transactions which had not been reported in the U.S. sales listing: (1) Certain export price (EP) transactions and constructed export price (CEP) sales made from inventory; and (2) certain direct CEP transactions which were sold during the POR, but did not enter until after the POR. With respect to the sales described in (1) above, for purposes of the final results, we have continued to base the margin for these unreported sales on facts available because the information necessary to calculate a final dumping margin for these U.S. sales is not on the record of this review. With respect to certain direct CEP sales, as described in (2) above, we note that the Department's instructions in the original questionnaire differed from those issued in supplemental questionnaires with respect to a key reporting requirement, the universe of sales. Because these instructions appear to have confused the respondent, we have determined to rely on the direct CEP sales listing as submitted by Thai Union for purposes of these final results. Thus, application of facts available with respect to certain direct CEP sales is neither necessary nor warranted.

Regarding the unreported EP and CEP inventory sales, in the preliminary results, we determined the facts

[5] These companies are: Applied DB; Chonburi LC; Haitai Seafood Co., Ltd. (Haitai); High Way International Co., Ltd. (High Way International); Merkur Co., Ltd. (Merkur); Ming Chao Ind Thailand (Ming Chao); Nongmon SMJ Products (Nongmon); SCT Co., Ltd. (SCT); Search and Serve; Shianlin Bangkok Co., Ltd. (located at 159 Surawong Road, Suriyawong, Bangrak, Bangkok 10500 Thailand) (Shainlin Bangkok); Star Frozen Foods Co., Ltd. (Star Frozen Foods); and Wann Fisheries Co., Ltd. (Wann Fisheries).

available margin using adverse inferences because we found that Thai Union failed to cooperate to the best of its ability in this review, within the meaning of section 776(b) of the Act. After considering the arguments raised by the parties on this issue, we are reversing our preliminary decision to base the margin for these unreported sales on AFA because: (1) the total value of the unreported sales is small; and (2) the Department was satisfied at verification that the universe of unreported sales was limited to those examined. As a result, we are now basing the final dumping margin for the remaining unreported sales upon facts available with no adverse inference. As facts available, we have used the weighted-average margin calculated for reported sales. For further discussion, see the Issues and Decision Memorandum (Decision Memo) accompanying this notice at Comments 13 and 14.

**Duty Absorption**

In the preliminary results, we found that antidumping duties have been absorbed by the Rubicon Group, Thai I-Mei, and Thai Union on all U.S. sales made through their affiliated importers of record. For the percentage of such sales, see Memoranda to the File from Kate Johnson and Rebecca Trainor entitled ''Second Administrative Review of Certain Frozen Warmwater Shrimp from Thailand: Preliminary Results Margin Calculation for the Rubicon Group,'' dated February, 28, 2008, at Attachment 2; ''2006–2007 Administrative Review of Certain Frozen Warmwater Shrimp from Thailand: Preliminary Results Margin Calculation for Thai I-Mei Frozen Foods Co., Ltd'' at Attachment 1; and Memorandum to the File from Brianne Riker, entitled ''Calculations Performed for Thai Union Frozen Products Co., Ltd./Thai Union Seafood Co., Ltd. for the Preliminary Results of the 2006–2007 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from Thailand,'' dated February, 28, 2008, at Attachment 2. We have not received any further information regarding this issue for the final results. Therefore, for the final results, we continue to find that antidumping duties have been absorbed by the Rubicon Group, Thai I-Mei, and Thai Union on all U.S. sales made through their affiliated importers of record.

With respect to Pakfood, it did not sell subject merchandise in the United States through an affiliated importer. Therefore, it is not appropriate to make a duty-absorption determination in this segment of the proceeding within the meaning of section 751(a)(4) of the Act. *See Agro Dutch Industries Ltd.* v. *United States*, 508 F.3d 1024, 1033 (Fed. Cir. 2007).

**Cost of Production**

As discussed in the preliminary results, we conducted an investigation to determine whether Pakfood, the Rubicon Group, and Thai Union made comparison market sales of the foreign like product during the POR at prices below their costs of production (COPs) within the meaning of section 773(b)(1) of the Act. We performed the cost test for these final results following the same methodology as in the *Preliminary Results.*

We found 20 percent or more of each respondent's sales of a given product during the reporting period were at prices less than the weighted-average COP for this period. Thus, we determined that these below-cost sales were made in ''substantial quantities'' within an extended period of time and at prices which did not permit the recovery of all costs within a reasonable period of time in the normal course of trade. *See* sections 773(b)(2)(B)—(D) of the Act.

Therefore, for purposes of these final results, we found that Pakfood, Rubicon, and Thai Union made below-cost sales not in the ordinary course of trade. Consequently, we disregarded these sales for each respondent and used the remaining sales as the basis for determining normal value pursuant to section 773(b)(1) of the Act.

**Analysis of Comments Received**

All issues raised in the case briefs by parties to this administrative review, and to which we have responded, are listed in the Appendix to this notice and addressed in the Decision Memo, which is adopted by this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room 1117, of the main Department building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/.* The paper copy and electronic version of the Decision Memo are identical in content.

**Changes Since the Preliminary Results**

Based on our analysis of the comments received, we have made certain changes in the margin calculations. These changes are discussed in the relevant sections of the Decision Memo.

**Final Results of Review**

We determine that the following weighted-average percentage margins exist for the period February 1, 2006, through January 31, 2007:

| Manufacturer/exporter | Percent margin |
|---|---|
| Pakfood Public Company Limited/Asia Pacific (Thailand) Company Limited/Chaophraya Cold Storage/Okeanos Company Limited/Takzin Samut Company Limited | 2.44 |
| Andaman Seafood Co., Ltd./Chanthaburi Frozen Food Co., Ltd./Chanthaburi Seafoods Co., Ltd./Euro-Asian International Seafoods Co., Ltd./Intersia Foods Co., Ltd./Phattana Seafood Co., Ltd./Phattana Frozen Food Co., Ltd./S.C.C. Frozen Seafood Co., Ltd./Seawealth Frozen Food Co. Ltd./Thailand Fishery Cold Storage Public Co., Ltd./Thai International Seafoods Co., Ltd./Wales & Co. Universe Limited | 3.77 |
| Thai I-Mei Frozen Foods Co., Ltd | 3.09 |
| Thai Union Frozen Products Public Co., Ltd./Thai Union Seafood Co., Ltd | 2.85 |
| Review-Specific Average Rate Applicable to the Following Companies: [6] | |
| Asian Seafoods Coldstorage Public Company Limited/Asian Seafoods Coldstorage (Suratthani) Co., Ltd./STC Foodpak Limited | 3.18 |
| Charoen Pokphand Foods Public Company Limited/CP Merchandising Co., Ltd./Klang Co., Ltd./Seafoods Enterprise Co., Ltd./Thai Prawn Culture Center Co., Ltd. | 3.18 |
| Crystal Frozen Foods Co., Ltd | 3.18 |
| CY Frozen Co., Ltd | 3.18 |
| Fortune Frozen Foods (Thailand) Co., Ltd | 3.18 |
| Good Fortune Cold Storage Ltd | 3.18 |
| Good Luck Product Co., Ltd | 3.18 |
| Inter-Pacific Marine Products Co., Ltd | 3.18 |

| Manufacturer/exporter | Percent margin |
|---|---|
| I.T. Foods Industries Co., Ltd | 3.18 |
| Kiang Huat Sea Gull Trading Frozen Food Public Company Limited | 3.18 |
| Kingfisher Holdings Limited/KF Foods Limited | 3.18 |
| Kitchens of the Ocean (Thailand) Co., Ltd | 3.18 |
| Kongphop Frozen Foods Co., Ltd | 3.18 |
| Marine Gold Products Ltd | 3.18 |
| May Ao Co., Ltd./May Ao Foods Co., Ltd | 3.18 |
| Narong Seafood Co., Ltd | 3.18 |
| Ongkorn Cold Storage Co., Ltd./Thai-ger Marine Co., Ltd | 3.18 |
| S&D Marine Products Co., Ltd | 3.18 |
| Seafresh Industry Public Company Limited/Seafresh Fisheries | 3.18 |
| Siam Intersea Co., Ltd | 3.18 |
| SMP Food Product Co., Ltd | 3.18 |
| Surapon Foods Public Co., Ltd./Surat Seafoods Co., Ltd | 3.18 |
| Tey Seng Cold Storage Co., Ltd./Chaiwarut Co., Ltd | 3.18 |
| Thai Royal Frozen Food Co., Ltd | 3.18 |
| The Siam Union Frozen Foods Co., Ltd./Kosamut Frozen Foods Co., Ltd | 3.18 |
| The Union Frozen Products Co., Ltd./Bright Sea Co., Ltd | 3.18 |
| Transamut Food Co., Ltd | 3.18 |
| Xian-Ning Seafood Co., Ltd | 3.18 |
| Yeenin Frozen Foods Co., Ltd | 3.18 |
| AFA Rate Applicable to the Following Companies: | |
| Applied DB | 57.64 |
| Chonburi LC | 57.64 |
| Haitai Seafood Co., Ltd | 57.64 |
| High Way International Co., Ltd | 57.64 |
| Merkur Co., Ltd | 57.64 |
| Ming Chao Ind Thailand | 57.64 |
| Nongmon SMJ Products | 57.64 |
| SCT Co., Ltd | 57.64 |
| Search and Serve | 57.64 |
| Shianlin Bangkok Co., Ltd. (located at 159 Surawong Road, Suriyawong, Bangrak, Bangkok 10500 Thailand) | 57.64 |
| Star Frozen Foods Co., Ltd | 57.64 |
| Wann Fisheries Co., Ltd | 57.64 |

**Assessment**

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department [6]intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.*, at or above 0.50 percent). Pursuant to 19 CFR 351.212(b)(1), for all of Thai I-Mei's U.S. sales, as well as for certain of Pakfood's, the Rubicon Group's, and Thai Union's U.S. sales, because these companies reported the entered value, we have calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the sales for which entered value was reported. For Pakfood's, the Rubicon Group's, and Thai Union's U.S. sales without reported entered values, we have calculated importer-specific per-unit duty assessment rates by aggregating the total amount of antidumping duties calculated for the examined sales and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we have calculated importer-specific *ad valorem* ratios based on the estimated entered value.

For the responsive companies which were not selected for individual examination, we have calculated an assessment rate based on the weighted average of the cash deposit rates calculated for the companies selected for individual examination excluding any which are *de minimis* or determined entirely on AFA.

Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.*, less than 0.50 percent).

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know their merchandise was destined for the United States. This clarification will also apply to POR entries of subject merchandise produced by companies for which we are rescinding the review based on certifications of no shipments, because these companies certified that they made no POR shipments of subject merchandise for which they had knowledge of U.S. destination. In such instances, we will instruct CBP to liquidate unreviewed entries at the ''all-others'' rate established in the LTFV investigation if there is no rate for the intermediate company(ies) involved in the transaction.

**Cash Deposit Requirements**

Further, the following deposit requirements will be effective for all shipments of shrimp from Thailand entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the reviewed

[6] This rate is based on the weighted average of the margins calculated for those companies selected for individual examination, excluding *de minimis* margins or margins based entirely on AFA.

companies will be the rates shown above; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 5.95 percent, the ''all-others'' rate established in the LTFV investigation. These deposit requirements shall remain in effect until further notice.

**Notification to Importers**

This notice serves as a final reminder to importers of their responsibility, under 19 CFR 351.402(f)(2), to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

**Notification to Interested Parties**

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 25, 2008.

**Stephen J. Claeys,**

*Acting Assistant Secretary for Import Administration.*

## Appendix—Issues in Decision Memorandum

**General Issues**

1. Offsets for Negative Margins
2. Classification of U.S. Warehousing Expenses as Movement or Selling Expenses

**Company-Specific Issues**

3. U.S. Sales for which Pakfood Public Company Ltd. (Pakfood) Did Not Report Entered Value
4. Universe of U.S. Sales for Pakfood
5. CEP Offset for Andaman Seafood Co., Ltd., Chanthaburi Frozen Food Co., Ltd., Chanthaburi Seafoods Co., Ltd., Euro-Asian International Seafoods Co., Ltd., Intersia Foods Co., Ltd., Phattana Seafood Co., Ltd., Phattana Frozen Food Co., Ltd., S.C.C. Frozen Seafood Co., Ltd., Seawealth Frozen Food Co., Ltd., Thailand Fishery Cold Storage Public Co., Ltd., Thai International Seafoods Co., Ltd., and Wales & Co. Universe Limited (collectively ''the Rubicon Group'')
6. Certain Selling Expenses for the Rubicon Group
7. Certain Clerical Errors for the Rubicon Group
8. CEP Profit Calculation for Thai I-Mei Frozen Foods Co., Ltd. (Thai I-Mei)
9. CEP Offset for Thai I-Mei
10. Calculation of Assessment Rate for Thai I-Mei
11. Constructed Value (CV) Inventory Carrying Costs for Thai I-Mei
12. Universe of Reviewed U.S. Sales for Thai I-Mei
13. Application of Adverse Facts Available (AFA) for Thai Union Frozen Products Public Co., Ltd. (TUF), Thai Union Seafood Co., Ltd. (TUS), (collectively ''Thai Union'') on Unreported CEP Sales
14. Application of AFA for Thai Union's Unreported EP Sales
15. Selection of the AFA Rate for Thai Union and the U.S. Sales Value to Which the AFA Rate Was Applied
16. CEP Offset for Thai Union
17. U.S. Warehousing Expenses for Thai Union
18. U.S. Freight Expenses for Thai Union
19. U.S. Discounts for Thai Union
20. Total Cost of Manufacturing Calculation for Thai Union

[FR Doc. E8–20165 Filed 8–28–08; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–836]**

### Notice of Extension of Time Limit for Final Results of the Antidumping Duty Administrative Review: Glycine from the People's Republic of China

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** August 29, 2008.

**FOR FURTHER INFORMATION CONTACT:** Erin Begnal or Toni Dach, 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) 482–1442 and (202) 482–1655, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On April 4, 2008, the Department of Commerce (''the Department'') published the preliminary results of the antidumping duty administrative review of glycine from the People's Republic of China, covering the period March 1, 2006, through February 28, 2007. *See Glycine from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission*, 73 FR 18503 (April 4, 2008). On July 15, 2008, the Department published a notice extending the time limit for the final results of this review by 30 days. *See Notice of Extension of Time Limit for Final Results of the Antidumping Duty Administrative Review: Glycine from the People's Republic of China*, 73 FR 40480 (July 15, 2008).

**Extension of Time Limits for Final Results**

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), and section 351.213(h)(1) of the Department's regulations, the Department shall issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of the date of publication of the order. The Act and the regulations further provide that the Department shall issue the final results of review within 120 days after the date on which the notice of the preliminary results was published in the **Federal Register**. See section 751(a)(3)(A) of the Act and section 351.213(h)(1) of the Department's regulations. However, if the Department determines that it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations allow the Department to extend the 245-day period to 365 days and the 120-day period to 180 days.

On April 30, 2008, the Department extended the deadlines for parties to submit case briefs and rebuttal briefs. As a result of these extensions and to allow the Department additional time to analyze issues raised in the case briefs and rebuttal briefs, the Department has determined that it is not practicable to complete the administrative review within the current time limit.

Section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations allow the Department to extend the deadline for the final results of a review to a maximum of 180 days from the date on which the notice of the preliminary results was published. For the reasons noted above, the Department is

extending the time limit for the completion of these final results by an additional 17 days, from the current deadline of September 2, 2008, until no later than September 19, 2008.

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: August 25, 2008.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E8–20155 Filed 8–28–08; 8:45 am]

**BILLING CODE 3510–DS–S**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–836]**

### Glycine from the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** In response to a request from petitioner GEO Specialty Chemicals, Inc. (''GEO''), the Department of Commerce (''the Department'') initiated an administrative review of the antidumping duty order on glycine from the People's Republic of China (''PRC''). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 73 FR 22337 (April 25, 2008). This administrative review covers the March 1, 2007, through February 29, 2008 period of review (''POR''). Due to the withdrawal of the request for the administrative review by GEO for 22 of the 24 companies for which it requested a review, we are now rescinding this review with respect to those 22 companies.

**EFFECTIVE DATE:** August 29, 2008.

**FOR FURTHER INFORMATION CONTACT:** Dena Crossland or Stephen Bailey, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Room 7866, Washington, DC 20230; telephone: (202) 482–3362 or (202) 482–0193, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On March 29, 1995, the Department published in the **Federal Register** an antidumping duty order on glycine from the PRC. See Antidumping Duty Order: Glycine from the People's Republic of China, 60 FR 16116 (March 29, 1995). On March 3, 2008, the Department published a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty order for the March 1, 2007, through February 29, 2008 POR. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 73 FR 11389 (March 3, 2008). On March 28, 2008, petitioner requested that the Department conduct an administrative review of sales of merchandise by the following 24 companies: A.H.A. International Company, Ltd.; Amol Biotech Limited; Antai Bio–Tech Co. Limited; Baoding Mantong Fine Chemistry Co., Ltd.; Beijing Jian Li Pharmaceutical Company; Degussa Rexim (Nanning); Du–Hope International Group; Hua Yip Company Inc.; Hubei Guangji Pharmaceutical Co.; Huzhou New Century International Trade Co.; Jizhou City Huayang Chemical Company, Ltd.; Jiangxi Ansun Chemical Technology; Nantong Dongchang Chemical Industry Corp.; Nantong Weifu Foreign Trade Co., Ltd.; Pudong Trans USA, Inc.; Qingdao Samin Chemical Company, Ltd.; Santec Chemicals Corporation; Schenker China Ltd.; Shanghai Freemen Lifescience Co., Ltd.; Sinosweet Co., Ltd.; Suzhou Everich Imp. & Exp. Co., Ltd.; Taigene Global Enterprises Ltd.; Tianjin Tiancheng Pharmaceutical Co.; and Wenda Co., Ltd. In response to this request, the Department published the initiation of the antidumping duty administrative review on glycine from the PRC on April 25, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 73 FR 22337 (April 25, 2008).

On July 21, 2008, petitioner timely withdrew its request for review for all companies except Baoding Mantong Fine Chemistry Co., Ltd. (''Baoding'') and Nantong Dongchang Chemical Industry Corp. (''Nantong'').

#### Partial Rescission of the Administrative Review

Pursuant to 19 CFR § 351.213(d)(1), the Secretary will rescind an administrative review under this section, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. The Secretary may extend this time limit if the Secretary decides that it is reasonable to do so. *See* 19 CFR § 351.213(d)(1). Petitioner withdrew its requests for review for all companies except Baoding and Nantong within the 90-day time limit. No other company had requested a review of these companies. Therefore, in response to the withdrawal of requests for administrative reviews by petitioner, the Department hereby rescinds the administrative review of the antidumping duty order on glycine from the PRC for the period March 1, 2007, through February 29, 2008, for A.H.A. International Company, Ltd.; Amol Biotech Limited; Antai Bio–Tech Co. Limited; Beijing Jian Li Pharmaceutical Coompany; Degussa Rexim (Nanning); Du–Hope International Group; Hua Yip Company Inc.; Hubei Guangji Pharmaceutical Co.; Huzhou New Century International Trade Co.; Jizhou City Huayang Chemical Company, Ltd.; Jiangxi Ansun Chemical Technology; Nantong Weifu Foreign Trade Co., Ltd.; Pudong Trans USA, Inc.; Qingdao Samin Chemical Company, Ltd.; Santec Chemicals Corporation; Schenker China Ltd.; Shanghai Freemen Lifescience Co., Ltd.; Sinosweet Co., Ltd.; Suzhou Everich Imp. & Exp. Co., Ltd.; Taigene Global Enterprises Ltd.; Tianjin Tiancheng Pharmaceutical Co.; and Wenda Co., Ltd. Because those companies for which we are rescinding this review do not have separate rates at this time (and thus remain part of the PRC–wide entity), the Department will issue assessment instructions upon the completion of this administrative review.

This notice serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR § 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR § 351.213(d)(4).

Dated: August 25, 2008.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E8–20166 Filed 8–28–08; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–580–861, A–570–935]**

### Certain Circular Welded Carbon Quality Steel Line Pipe from the Republic of Korea and the People's Republic of China: Postponement of Preliminary Determination of Antidumping Duty Investigations

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** August 29, 2008.

**FOR FURTHER INFORMATION CONTACT:** Patrick Edwards, Dena Crossland (Republic of Korea), Jeffrey Pedersen, or Rebecca Pandolph (People's Republic of China), Office 7 and Office 4, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–8029, (202) 482–3362, (202) 482–2769, and (202) 482–3627, respectively.

**SUPPLEMENTARY INFORMATION:**

**Postponement of Preliminary Determinations**

On April 23, 2008, the Department of Commerce (the Department) initiated the antidumping duty investigations of certain circular welded carbon quality steel line pipe (line pipe) from the Republic of Korea (Korea) and the People's Republic of China (PRC). *See Certain Circular Welded Carbon Quality Steel Line Pipe from the Republic of Korea and the People's Republic of China: Initiation of Antidumping Duty Investigations*, 73 FR 23188 (April 29, 2008). The notice of initiation stated that the Department would issue its preliminary determinations for these investigations no later than 140 days after the date of issuance of the initiation (*i.e.*, September 10, 2008) in accordance with section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act).

On August 12, 2008, Maverick Tube Corporation, Tex–Tube Company, and United States Steel Corporation (collectively, the petitioners) made a timely request pursuant to 19 CFR 351.205(e) for a postponement of the preliminary determinations with respect to Korea and the PRC. Therefore, the Department is postponing the deadline for the preliminary determinations with respect to Korea and the PRC pursuant to section 733(c)(1)(A) of the Act by 50 days to October 30, 2008. The deadline for the final determination will continue to be 75 days after the date of the preliminary determination, unless extended.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: August 21, 2008.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E8–20158 Filed 8–28–08; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–122–853, A–570–937]**

### Citric Acid and Certain Citrate Salts from Canada and the People's Republic of China: Postponement of Preliminary Determinations of Antidumping Duty Investigations

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** August 29, 2008.

**FOR FURTHER INFORMATION CONTACT:** Terre Keaton Stefanova (Canada) or Marin Weaver (the People's Republic of China), AD/CVD Operations, Offices 2 and 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1280 or (202) 482–2336, respectively.

**SUPPLEMENTARY INFORMATION:**

**Postponement of Preliminary Determinations**

On May 5, 2008, the Department of Commerce (the Department) initiated the antidumping investigations of Citric Acid and Certain Citrate Salts from Canada and the People's Republic of China. *See Citric Acid and Certain Citrate Salts from Canada and the People's Republic of China: Initiation of Antidumping Duty Investigations*, 73 FR 27492 (May 13, 2008).

The notice of initiation stated that unless postponed the Department would issue the preliminary determinations for these investigations no later than 140 days after the date of issuance of the initiation, in accordance with section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act). The preliminary determinations are currently due no later than September 21, 2008.

On August 19, 2008, the petitioners, Archer Daniels Midland Company, Cargill, Incorporated, and Tate & Lyle Americas, Inc., made a timely request pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e) for a 50-day postponement of the preliminary determinations. The petitioners requested postponement of the preliminary determinations in order to ensure that the Department has ample time to thoroughly analyze the novel and complex issues involved in these investigations.

Because there are no compelling reasons to deny the request, the Department is postponing the deadline for the preliminary determinations pursuant to section 733(c)(1)(A) of the Act to November 12, 2008,[1] the next business day after 190 days from the date of initiation. The deadline for the final determinations will continue to be 75 days after the date of the preliminary determinations, unless postponed.

This notice is issued and published pursuant to sections 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: August 25, 2008.

**Stephen J. Claeys,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E8–20153 Filed 8–28–08; 8:45 am]

BILLING CODE 3510–DS–S

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XK06**

### Endangered Species; File No. 10115

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

**ACTION:** Issuance of permit.

**SUMMARY:** Notice is hereby given that Dr. Douglas Peterson, Warnell School of Forest Resources (Fisheries Division), University of Georgia, Athens, Georgia 30602, has been issued a permit to take shortnose sturgeon (*Acipenser brevirostrum*) for purposes of scientific research.

**ADDRESSES:** The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Southeast Region, NMFS, 263 13th Ave South, St. Petersburg, FL 33701; phone (727)824–5312; fax (727)824–5309.

[1] November 11, 2008, is a federal holiday.

**FOR FURTHER INFORMATION CONTACT:** Malcolm Mohead or Brandy Belmas, (301)713–2289.

**SUPPLEMENTARY INFORMATION:** On February 21, 2008, notice was published in the **Federal Register** (73 FR 9525) that a request for a scientific research permit to take shortnose sturgeon had been submitted by the above-named individual. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Dr. Douglas Peterson is authorized to conduct a five-year scientific research (presence/absence) study of shortnose sturgeon in the Saint Marys and Satilla Rivers, Georgia and Florida. The purpose of the proposed research is to assess the current status of shortnose sturgeon in these rivers, as well as evaluate the current habitat availability in each river. If shortnose sturgeon are found, another objective of the research will be to quantify the genetic discreteness and effective population size of the extant stock.

Specifically, Dr. Peterson is authorized to capture (by gill or trammel nets), handle, measure, weigh, PIT tag, and genetic fin clip up to 85 shortnose sturgeon annually from each river for the duration of the permit, or five years. To document spawning in the rivers, up to 20 eggs or larvae may be lethally collected in each river with artificial substrates. No unintentional mortality for either river is authorized.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: August 25, 2008.

**P. Michael Payne,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. E8–20163 Filed 8–28–08; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XK09**

### Caribbean Fishery Management Council; Public Meetings

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

**ACTION:** Notice of scoping meetings.

**SUMMARY:** The Caribbean Fishery Management Council will hold scoping meetings to obtain input from fishers, the general public, and the local agencies representatives on the Regulatory Amendment to the Fishery Management Plan for the Reef Fish Fishery of Puerto Rico and the United States Virgin Islands Concerning Bajo de Sico Seasonal Closure including a Regulatory Impact Review and an Environmental Assessment.

**DATES:** The scoping meetings will be held on the following dates and locations:

•September 18, 2008, Mayaguez Resort and Casino, Rd. 104, Km. 0.3, Mayaguez, Puerto Rico

•September 19, 2008, Pierre Hotel at Gallery Plaza, De Diego Avenue, Santurce, Puerto Rico

•September 22, 2008, Frenchman's Reef and Morning Star Hotel, 5 Estate Bakkeroe, St. Thomas, USVI

•September 23, 2008, Buccaneer Hotel,,Estate Shoys, Christtiansted, St. Croix, USVI.

All meetings will be held from 7 p.m. to 10 p.m.

**FOR FURTHER INFORMATION CONTACT:** Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–2577, telephone: (787) 766–5926.

**SUPPLEMENTARY INFORMATION:** The Caribbean Fishery Management Council will hold Scoping meetings to receive public input on the Regulatory Amendment to the Fishery Management Plan for the Reef Fish Fishery of Puerto Rico and the United States Virgin Islands Concerning Bajo de Sico Seasonal Closure including a Regulatory Impact Review and an Environmental Assessment.

Although non-emergency issues not contained in this agenda may come before these groups 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 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 Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and other auxiliary aids, please contact Mr. Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–2577, telephone: (787) 766–5926, at least 5 days prior to the meeting date.

Dated: August 26, 2008.

**Tracey L. Thompson,**

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

[FR Doc. E8–20067 Filed 8–28–08; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XK08**

### New England Fishery Management Council; Public Meetings

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

**ACTION:** Notice; public meetings.

**SUMMARY:** The New England Fishery Management Council's (Council) Groundfish Advisory Panel and Recreational Advisory Panel will hold two meetings to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

**DATES:** The meetings will be held on September 16 and 17, 2008. For specific dates and times, see **SUPPLEMENTARY INFORMATION.**

**ADDRESSES:** The meetings 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 panel's schedule and agenda for the following two meetings are as follows:

*Groundfish Advisory Panel Meeting - Tuesday, September 16, 2008, beginning at 9:30 a.m.*

1. The Groundfish Advisory Panel will meet to develop recommendations for Amendment 16 to the Northeast Multispecies Fishery Management Plan. The Advisory Panel will review management options that are under development and current estimates of stock status. They will provide recommendations for the measures for the commercial fishery that will be considered by the Groundfish Oversight Committee and the full Council at a later date.
2. The Panel may make recommendations on any measure, such as days-at-sea limits, trip limits, closed areas, sector provisions, annual catch limits and accountability measures, etc.
3. Other business.

*Recreational Advisory Panel Meeting - Wednesday, September 17, 2008, beginning at 9:30 a.m.*

1. The Recreational Advisory Panel will meet to develop recommendations for Amendment 16 to the Northeast Multispecies Fishery Management Plan. The Advisory Panel will review management options that are under development and current estimates of stock status. They will provide recommendations for the measures for the recreational fishery that will be considered by the Groundfish Oversight Committee and the full Council at a later date.
2. The Panel may make recommendations on any measure, such as minimum fish sizes, possession (bag) limits, seasons, closed areas, annual catch limits and accountability measures, etc.
3. Other business.

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**

These meetings are 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 working days prior to the meeting date.

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

Dated: August 26, 2008.

**Tracey L. Thompson,**

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

[FR Doc. E8–20066 Filed 8–28–08; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XK10**

### North Pacific 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 North Pacific Fishery Management Council's (Council) Pacific Northwest Crab Industry Advisory Committee (PNCIAC) will meet in Seattle, WA.

**DATES:** The meeting will be held on September 22, 2008, from 9 a.m. to 12 noon.

**ADDRESSES:** The meeting will be held at the Leif Erikson Hall, 2245 NW 57th Street, 3rd Floor, Norna Room, Seattle, WA.

*Council address*: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

**FOR FURTHER INFORMATION CONTACT:** Diana Stram, North Pacific Fishery Management Council, telephone: (907) 271–2809 or Arni Thomson, Secretary of PNCIAC, telephone: (206) 769–3474.

**SUPPLEMENTARY INFORMATION:** The PNCIAC will review ongoing revisions of metadata tables that are integral to the Bering Sea Aleutian Islands Crab Rationalization Economic Data Reports.

Although non-emergency issues not contained in this agenda may come before this group 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 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 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 Gail Bendixen, (907) 271–2809, at least 5 working days prior to the meeting date.

Dated: August 26, 2008.

**Tracey L. Thompson,**

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

[FR Doc. E8–20068 Filed 8–28–08; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2008–OS–0096]**

### Proposed Collection; Comment Request

**AGENCY:** Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

**ACTION:** Notice.

**SUMMARY:** In compliance with section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995*, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed extension of a public information collection and seeks public comment on the provisions thereof. *Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by October 28, 2008.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

*Instructions:* All submissions received must include the agency name, docket

number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Under Secretary of Defense (Personnel and Readiness) Defense Commissary Agency, ATTN DOB (Barry White) 1300 E Avenue, Fort Lee, VA 23801–1800, or call (804) 734–8974.

*Title, Associated Form, and OMB Control Number:* Commissary Evaluation and Utility Surveys—Generic, OMB Control Number 0704–0407.

*Needs and Uses:* The Defense Commissary Agency will conduct a variety of surveys on an as needed basis. The survey population will include, but is not limited to, persons eligible to use the commissary throughout the world. The surveys will be used to assess the customer's satisfaction with various aspects of the commissary operation and obtain their opinions of various commissary issues. Surveys will also be used to help determine individual commissary market potential and commissary size requirements.

*Affected Public:* Individuals or households, businesses or other for profit.

*Annual Burden Hours:* 148 hours.

*Number of Respondents:* 6633.

*Responses per Respondent:* 1.

*Average Burden per Response:* 1.34 minutes.

*Frequency:* On occasion.

**SUPPLEMENTARY INFORMATION:**

**Summary of Information Collection**

(All respondents are authorized patrons by DoD regulations, unless otherwise described.)

**Commissary Sizing Survey**

Surveys will support commissary renovation and new construction. Survey results will be used to help determine market potential and associated commissary size requirements.

**Facility Site Decisions**

Surveys will support commissary site decisions. Where applicable, commissary user preference can be incorporated into the site location decision process. Patrons will input their answers to questions concerning where they would like a new facility located, as well as give their opinions and concerns that will affect their shopping experience. The survey results will also be used to estimate where the commissary users are located through the use of population density maps.

**Patron Migration Survey**

These surveys will aid in predicting the impact to commissaries that are near a closing commissary or a commissary that is undergoing some kind of transformation that may cause commissary users to migrate to an alternative nearby commissary. The results will be used to determine requirements for the nearby receiving commissaries.

**Commissary Operational Surveys**

These surveys will supply information on various processes within the commissaries. The surveyed population could be commissary customers, employees within the Agency, venders, distributors, or contractors. Persons surveyed will not necessarily be authorized commissary users.

**Market Basket Price Surveys**

These surveys will be administered to commissary eligible personnel to assess their perception of our savings compared to local commercial supermarkets.

**Demographic Surveys**

This survey will be conducted, as needed, to assess the demographic make-up of commissary users. The results may be used in conjunction with population data to reveal differences in key demographics such as status, family size, distance from a commissary, age, service membership, and military grade.

August 22, 2008.

**Patricia L. Toppings,**

*OSD Federal Register, Liaison Officer, Department of Defense.*

[FR Doc. E8–20020 Filed 8–28–08; 8:45 am]

BILLING CODE 5001–06–P

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket No. DoD–2008–DARS–0092]**

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Consideration will be given to all comments received by September 29, 2008.

*Title and OMB Number:* Defense Federal Acquisition Regulation Supplement (DFARS) Part 236, Construction and Architect-Engineer Contracts, and related clauses at DFARS 252.236; OMB Control Number 0704–0255.

*Type of Request:* Extension.

*Number of Respondents:* 2,595.

*Responses per Respondent:* 1.0133.

*Annual Responses:* 2,630.

*Average Burden per Response:* 100.107 hours.

*Annual Burden Hours:* 263,281.

*Needs and Uses:* This requirement provides for the collection of information from contractors regarding security of information technology; tariffs pertaining to telecommunications services; and proposals from common carriers to perform special construction under contracts for telecommunications services. Contracting officers and other DoD personnel use the information to ensure that information systems are protected; to participate in the establishment of tariffs for telecommunications services; and to establish reasonable prices for special construction by common carriers.

*Affected Public:* Business or other for-profit; not-for-profit institutions.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

*Instructions:* All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are

received without change, including any personal identifiers or contact information.

*DOD Clearance Officer:* Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: August 22, 2008.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. E8–20021 Filed 8–28–08; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket No. DoD–2008–DARS–0093]**

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Consideration will be given to all comments received by September 29, 2008.

*Title and OMB Number:* Defense Federal Acquisition Regulation Supplement (DFARS) Part 216, Types of Contracts, and related clauses at DFARS 252.216–7000, Economic Price Adjustment—Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products; DFARS 252.216–7001, Economic Price Adjustment—Nonstandard Steel Items; and DFARS 252.216–7003, Economic Price Adjustment-Wage Rates or Material Prices Controlled by a Foreign Government; OMB Control Number 0704–0259.

*Type of Request:* Extension.

*Number of Respondents:* 197.

*Responses per Respondent:* 1.98.

*Annual Responses:* 390.

*Average Burden per Response:* 4.01 hours.

*Annual Burden Hours:* 1,564.

*Needs and Uses:* The clauses at DFARS 252.216–7000, 252.216–7001, and 252.216–7003 require contractors with fixed-price economic price adjustment contracts to submit information to the contracting officer regarding changes in established material prices or wage rates. The contracting officer uses this information to make appropriate adjustments to contract prices.

*Affected Public:* Business or other for-profit; not-for-profit institutions.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

*Instructions:* All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

*DOD Clearance Officer:* Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

August 22, 2008.

**Patricia L. Toppings,**

*OSD Federal Register, Liaison Officer, Department of Defense.*

[FR Doc. E8–20025 Filed 8–28–08; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket No. DoD–2008–OS–0062]**

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Consideration will be given to all comments received by September 29, 2008.

*Title, Form, and OMB Number:* Request for Reference, DD Form 370, OMB Number 0704–0167.

*Type of Request:* Extension.

*Number of Respondents:* 50,000.

*Responses per Respondent:* 1.

*Annual Responses:* 50,000.

*Average Burden per Response:* .167 (10 minutes).

*Annual Burden Hours:* 8,350.

*Needs and Uses:* This information collection requirement is necessary to obtain personal reference data, in order to request a waiver, on a military applicant who has committed a civil or criminal offense and would otherwise be disqualified for entry into the Armed Forces of the United States. The DD Form 370 is used to obtain references information evaluating the character, work habits, and attitudes of an applicant from a person of authority or standing within the community.

*Affected Public:* Individuals or households; business or other for-profit; not-for-profit institutions; State, local, or tribal government.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Ms. Sharon Mar.

Written comments and recommendations on the proposed information collection should be sent to Ms. Mar at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503. Comments may be e-mailed to Ms. Mar at *Sharon_Mar@omb.eop.gov*.

You may also submit comments, identified by docket number and title, by the following method:

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

*Instructions:* All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

*DoD Clearance Officer:* Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: August 22, 2008.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. E8–20026 Filed 8–28–08; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket No. DoD–2008–DARS–0094]**

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Consideration will be given to all comments received by September 29, 2008.

*Title and OMB Number:* Defense Federal Acquisition Regulation Supplement (DFARS) Part 229, Taxes, and related clause at DFARS 252.229–7010; OMB Control Number 0704–0390.

*Type of Request:* Extension.

*Number of Respondents:* 75.

*Responses per Respondent:* 1.

*Annual Responses:* 75.

*Average Burden per Response:* 4 hours.

*Annual Burden Hours:* 300.

*Needs and Uses:* DoD uses this information to determine if DoD contractors in the United Kingdom have attempted to obtain relief from customs duty on vehicle fuels in accordance with contract requirements.

*Affected Public:* Business or other for-profit.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

*Instructions:* All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

*DOD Clearance Officer:* Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: August 22, 2008.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. E8–20028 Filed 8–28–08; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket No. DoD–2007–OS–0144]**

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Consideration will be given to all comments received by September 29, 2008.

*Title, Form, and OMB Number:* Personnel Security Investigation Projection for Industry Survey; DSS Form 232; OMB Number 0704–0417.

*Type of Request:* Revision.

*Number of Respondents:* 12.150.

*Responses per Respondent:* 1.

*Annual Responses:* 12.150.

*Average Burden per Response:* 80 minutes.

*Annual Burden Hours:* 16,200.

*Needs and Uses:* The execution of the DSS Form 232 is an essential factor in projecting the needs of cleared contractor entities for personnel security investigations (PSIs). This collection of information requests the assistance of the Facility Security Officer to provide projections of the numbers and types of PSIs. The data will be incorporated into DSS's budget submissions and used to track against actual PSI submissions. The form will be distributed electronically via a web-based commercial survey tool.

*Affected Public:* Business or other for-profit; not-for-profit institutions.

*Frequency:* Annually.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Ms. Sharon Mar.

Written comments and recommendations on the proposed information collection should be sent to Ms. Mar at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503. Comments may be e-mailed to Ms. Mar at *Sharon_Mar@omb.eop.gov.*

You may also submit comments, identified by docket number and title, by the following method:

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

*Instructions:* All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

*DOD Clearance Officer:* Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: August 22, 2008.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. E8–20031 Filed 8–28–08; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2008–HA–0098]**

### Proposed Collection; Comment Request

**AGENCY:** Office of the Assistant Secretary of Defense for Health Affairs, DoD.

**ACTION:** Notice

**SUMMARY:** In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are

invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by October 28, 2008.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

• *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

*Instructions:* All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to TRICARE Management Activity, Purchased Care Procurement Branch, ATTN: John J.M. Leininger, 16401 E. Centretech Parkway, Aurora, CO 80011–9066, telephone 303–676–3613.

*Title; Associated Form; and OMB Number:* Health Insurance Claim Form, UB–04 CMS–1450, OMB Number 0720–0013.

*Needs and Uses:* The information collection requirement is necessary for a medical institution to claim benefits under the Defense health Program, TRICARE, which includes the Civilian Health and Medical Program for the Uniform Services (CHAMPUS). The information collected will be used by TRICARE/CHAMPUS to determine beneficiary eligibility, other health insurance liability, certification that the beneficiary received the care, and that the provider is authorized to receive TRICARE/CHAMPUS payments. The form will be used by TRICARE/CHAMPUS and its contractors to determine the amount of benefits to be paid to TRICARE/CHAMPUS institutional providers.

*Affected Public:* Business or other for profit; not-for-profit institutions.

*Annual Burden Hours:* 2,125,000.

*Number of Respondents:* 8,500,000.

*Responses per Respondent:* 1.

*Average Burden per Response:* 15 minutes.

*Frequency:* On occasion.

**SUPPLEMENTARY INFORMATION:**

**Summary of Information Collection**

This collection instrument is for use by medical institutions filing for reimbursement with the Defense Health Program, TRICARE, which includes the Civilian Health and Medical Program of the Uniformed Services (TRICARE/CHAMPUS). TRICARE/CHAMPUS is a health benefits entitlement program for the dependent of active duty members of the Uniformed Service, and deceased sponsors, retirees and their dependents, dependents of department of transportation (Coast Guard) sponsors, and certain North Atlantic treaty Organization, National Oceanic and Atmospheric Administration, and Public Health Service eligible beneficiaries. Use of the UB–04 CMS1450 continues TRICARE/CHAMPUS commitments to use the national standard claim form for reimbursement of medical services/supplies provided by institutional providers.

Dated: August 22, 2008.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. E8–20034 Filed 8–28–08; 8:45 am]

**BILLING CODE 5001–06–P**

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2008–OS–0097]**

### Proposed collection; comment request

**AGENCY:** Director of Administration and Management, Office of the Secretary, DoD.

**ACTION:** Notice.

**SUMMARY:** In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Director of Administration and Management, Office of the Secretary announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by October 28, 2008.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

• *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

*Instructions:* All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Director of Administration and Management, Directorate for Organizational and Management Planning, *Attn:* Mr. Mark Munson, 1950 Defense Pentagon, Washington, DC 20301–1950; *e-mail: mark.munson@osd.mil*; telephone (703) 703–614–4783.

*Title; Associated Form; and OMB Number:* Secretary of Defense Biennial Review of Defense Agencies and DoD Field Activities; OMB Control Number 0704–0422.

*Needs and Uses:* Section 192(c) of Title 10, U.S.C., requires that the Secretary of Defense review the services and supplies provided by each Defense Agency and DoD Field Activity. The purposes of the Biennial Review are to ensure the continuing need for each Agency and Field Activity and to ensure that the services and supplies provided by each entity is accomplished in a more effective, economical, or efficient manner than by the Military

Departments. A standard organizational customer survey process serves as the principal data-gathering methodology in the Biennial Review. As such, it provides valuable information to senior officials in the Department regarding the levels of satisfaction held by the organizational customers of the approximately 30 Defense Agencies and DoD Field Activities covered by the Biennial Review.

*Affected Public:* Business or other for profit; Not-for-profit institutions.

*Annual Burden Hours:* 625.

*Number of Respondents:* 2,500.

*Responses per Respondent:* 1.

*Average Burden per Response:* 15 minutes.

*Frequency:* Biennially.

**SUPPLEMENTARY INFORMATION:**

**Summary of Information Collection**

The Biennial Review employs a survey to assess organizational-customer satisfaction with the associated business line and addresses overall responsiveness to customer requirements, satisfaction with specific products and services, and quality of coordination with organizational customers. The survey identifies distinct areas of business (business lines) for all Defense Agencies and DoD Field Activities participating in the Review, creates lists of organizational customers specific to each business line, and uses a set of standard evaluation questions across all business lines. Respondents covered by this announcement are private-sector customers of these business lines, such as for the Federal Voting Assistance Program and Defense Finance and Accounting Service.

Dated: August 22, 2008

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. E8–20035 Filed 8–28–08; 8:45 am]

**BILLING CODE 5001–06–P**

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Base Closure and Realignment

**AGENCY:** Department of Defense, Office of Economic Adjustment.

**ACTION:** Notice.

**SUMMARY:** This Notice is provided pursuant to section 2905(b)(7)(B)(ii) of the Defense Base Closure and Realignment Act of 1990. It provides a partial list of military installations closing or realigning pursuant to the 2005 Defense Base Closure and Realignment (BRAC) Report. It also provides a corresponding listing of a successor Local Redevelopment Authority (LRA) for Newport Chemical Depot, Indiana recognized by the Secretary of Defense, acting through the Department of Defense Office of Economic Adjustment (OEA), as well as the point of contact, address, and telephone number for the successor LRA for this installation. Representatives of state and local governments, homeless providers, and other parties interested in the redevelopment of the installation should contact the person or organization listed. The following information will also be published simultaneously in a newspaper of general circulation in the area of the installation. There will be additional Notices providing this same information about LRAs for other closing or realigning installations where surplus government property is available as those LRAs are recognized by the OEA.

**DATES:** *Effective Date:* August 29, 2008.

**FOR FURTHER INFORMATION CONTACT:** Director, Office of Economic Adjustment, Office of the Secretary of Defense, 400 Army Navy Drive, Suite 200, Arlington, VA 22202–4704, (703) 604–6020.

**Local Redevelopment Authorities (LRAs) for Closing and Realigning Military Installations**

*Indiana*

*Installation Name:* Newport Chemical Depot.

*LRA Name:* Newport Chemical Depot Reuse Authority, successor to Newport Chemical Depot Redevelopment Authority.

*Point of Contact:* Ed Cole, Executive Director, Vermillion County Economic Development Council.

*Address:* 2250 North Main Street, Clinton, IN 47842.

*Phone:* (765) 832–3870.

Dated: August 22, 2008.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. E8–20056 Filed 8–28–08; 8:45 am]

**BILLING CODE 5001–06–P**

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Base Closure and Realignment

**AGENCY:** Department of Defense, Office of Economic Adjustment.

**ACTION:** Notice.

**SUMMARY:** This Notice is provided pursuant to section 2905(b)(7)(B)(ii) of the Defense Base Closure and Realignment Act of 1990. It provides a partial list of military installations closing or realigning pursuant to the 2005 Defense Base Closure and Realignment (BRAC) Report. It also provides a corresponding listing of the Local Redevelopment Authority (LRA) for SGT George D. Libby USARC, Connecticut recognized by the Secretary of Defense, acting through the Department of Defense Office of Economic Adjustment (OEA), as well as the point of contact, address, and telephone number for the LRA for this installation. Representatives of state and local governments, homeless providers, and other parties interested in the redevelopment of the installation should contact the person or organization listed. The following information will also be published simultaneously in a newspaper of general circulation in the area of the installation. There will be additional Notices providing this same information about LRAs for other closing or realigning installations where surplus government property is available as those LRAs are recognized by the OEA.

**DATES:** *Effective Date:* August 29, 2008.

**FOR FURTHER INFORMATION CONTACT:** Director, Office of Economic Adjustment, Office of the Secretary of Defense, 400 Army Navy Drive, Suite 200, Arlington, VA 22202–4704, (703) 604–6020.

**Local Redevelopment Authorities (LRAs) for Closing and Realigning Military Installations**

*Connecticut*

*Installation Name:* SGT George D. Libby USARC.

*LRA Name:* City of New Haven Local Redevelopment Authority.

*Point of Contact:* Robert Smuts, Chief Administrative Officer, City of New Haven.

*Address:* 165 Church Street, 3R, New Haven, CT 06510.

*Phone:* (203) 946–7901.

Dated: August 22, 2008.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. E8–20057 Filed 8–28–08; 8:45 am]

**BILLING CODE 5001–06–P**

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

### National Defense University Board of Visitors (BOV) Open Meeting

**AGENCY:** Department of Defense; National Defense University.

**ACTION:** Notice of open meeting.

**SUMMARY:** The National Defense University (NDU), Designated Federal Officer, has scheduled a meeting of the Board of Visitors. The National Defense University Board of Visitors is a Federal Advisory Board. The Board meets twice a year in proceedings that are open to the public.

**DATES:** The meeting will be held on December 2, 2008 from 0900 to 1500 and December 3, 2008 from 1000 to 1300.

**ADDRESSES:** The Board of Visitors meeting will be held at Building 62, Marshall Hall, Room 155, National Defense University, 300 5th Avenue, Fort McNair, Washington, DC 20319–5066.

**FOR FURTHER INFORMATION CONTACT:** Jeanette Tolbert at (202) 685–3955, Fax (202) 685–3328, or *e-mail: TolbertJ@ndu.edu.*

**SUPPLEMENTARY INFORMATION:**

*Agenda:* State of the University, National Security Professional Development, Accreditation, and Federal Policy.

The meeting is open to the public; limited space is made available for observers and will be allocated on a first-come, first-served basis.

Dated: August 22, 2008.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. E8–20033 Filed 8–28–08; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2208-OS–0099]**

### Privacy Act of 1974; Systems of Records

**AGENCY:** Defense Logistics Agency, DoD.

**ACTION:** Notice to alter a system of records.

**SUMMARY:** The Defense Logistics Agency proposes to alter a system of records notice in its existing inventory of records 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 29, 2008 unless comments are received which result in a contrary determination.

**ADDRESSES:** Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, *ATTN:* DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jody Sinkler at (703) 767–5045.

**SUPPLEMENTARY INFORMATION:** The Defense Logistics Agency 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 proposed system reports, as required by 5 U.S.C. 552a(r), of the Privacy Act of 1974, as amended, were submitted on August 22, 2008, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: August 22, 2008.

**Patricia Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

**S400.20**

**SYSTEM NAME:**

Day Care Facility Registrant and Applicant Records (April 26, 2002, 67 FR 8012).

**CHANGES:**

* * * * *

**SYSTEM NAME:**

Delete entry and replace with ''Day Care Facility Registrant, Applicant and Enrollee Records.''

**SYSTEM LOCATION:**

Delete entry and replace with ''Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6221 and participating DLA Field Activities. Mailing addresses for the DLA Field Activities may be obtained from the System manager below.''

* * * * *

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Delete entry and replace with ''*Waiting List Applicant*'' records include the names of the sponsor and spouse (when applicable), Social Security Numbers; home and electronic mail addresses; work, home, cell and pager telephone numbers; place of employment; rank or civilian pay grade; child's name and birth date documentation of any special needs or health concerns regarding the child, to include documentation of food restrictions; physical abilities and limitations; physical, emotional, or other special care requirements (including restrictions or special precautions concerning diet); special services Individual Development Plans (IDP) when special needs have already been diagnosed.

*Enrollees* records include all items listed above under ''Waiting List Applicant'' plus names and phone numbers of emergency points of contact; medical, dental and insurance provider data; medical examination reports, health assessments and screening results; immunization, allergy and medication information; documentation of Special Needs Resource Team (SNRT) meetings, recommendations and follow-up; documentation of behavioral issues; special services Individual Development Plans (IDP) (when applicable); child portfolios to include observations, anecdotal records, and developmental milestone checklists; parent/teacher conference data; parent complaints; transportation requirements and schedules; parental disabilities, impairments, or special needs; authorization, consent, and agreement forms; medical power of attorney; serious event/incident report forms; symptom records; escort and emergency designees' name and data to include physical and electronic addresses and work, home, cell, and pager telephone numbers; documentation of returned checks; status of hardship requests; family care plans to include documentation of guardianship and medical power of attorney in the absence of parent(s); and suspected/reported child abuse or neglect forms. The records may include child and family profiles which gather information on family background, cultural, and ethnic data such as religion, native language, and family composition for cultural and social enrichment activities. For fee assessment purposes, the application records also include family income data; documentation of disability if unemployed; and, for security purposes, court records with information on custody and visitation arrangements when applicable. **Note:** Any and all information relating to an individual's religious preference or religious activity is collected and maintained only if the individual has made an informed decision to voluntarily provide the information.

*Employee* records include their name; Social Security Number and birth date; home address; home and cell telephone numbers; electronic mail address; names, telephone numbers and home

addresses of emergency points of contact; health assessment, psychological evaluations, immunization records, and documentation of ongoing medication; verification of background checks and suitability determination; training records, educational background, and other related employment experiences; employment references; job performance standards, copies of appraisals, awards, promotions and grievance actions; copies of personnel actions; counseling statements as appropriate.

*Volunteer* records include their name, and birth date; home addresses; home, work and cell telephone numbers; electronic mail address; place of employment; names, telephone numbers and home addresses of emergency points of contact; health assessment, psychological evaluations, immunization records, and documentation of ongoing medication; verification of background checks and suitability determination; and training records.

* * * * *

**PURPOSE(S):**

Delete entry and replace with ''With the exception of family income data, the records are available to the Child and Youth Program Coordinator, the CDP Director and Assistant Director, the CDP Training and Curriculum Specialist, and applicable administrative and care giving staff for the purpose of providing safe, developmentally appropriate day care services and to ensure proper, effective response in the event of an emergency. These records may also be made available to subject matter experts during inspections.''

Individualized data on total family income is provided to employing Defense components for fiscal planning purposes, for subsidy computation, and to reimburse DLA for day care services rendered under a support agreement. Verification of family income data is also used for fee assessment purposes and is made available to DLA representatives during inspections.

Serious Event Forms, Incident Report Forms, and monthly injury logs are provided to the Child and Youth Programs Coordinator, the CDP Director, and the installation's safety and health office for the purpose of tracking all accidents/incidents that occur within the CDP center or during sponsored activities off-site. These reports are also made available to safety and health professionals during inspections.

Records pertaining to physical abilities and limitations; physical, emotional or other special care requirements to include restrictions or special precautions concerning diet; existing IDPs; and documentation of behavioral issues or other special needs will be provided to members of the SNRT for the purpose of determining staff training needs, appropriate classroom placement, necessity of contract modification, and appropriate follow-up, to include collaboration with community resources as needed. Based upon the severity of the special need, the installation's paramedic squad will be notified of the child's enrollment at the CDC and the specific condition that may require attention. Records will also be available to subject matter experts during inspections.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Delete entry and replace with ''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 physicians, dentists, medical technicians, hospitals, or health care providers in the course of obtaining emergency medical attention.

To Federal, state, and local officials involved with childcare or health services for the purpose of reporting suspected or actual child abuse.

To Federal, state, and local agencies and private sector entities that employ individuals who are registered to use the day care center for the purpose of verifying income. **Note:** Only name and data pertaining to reported total family income is disclosed to employing agencies and entities.

To State Public Health Authorities and/or the Center for Disease Control for the purpose of reporting communicable diseases. Information released does not contain any personally identifiable information.

The DOD ''Blanket Routine Uses'' apply to this system of records

Add a new element to the notice: ''Disclosures to consumer reporting agencies:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (14 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government; typically to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records.

''The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.''

* * * * *

**SAFEGUARDS:**

Delete entry and replace with ''Records are maintained in areas accessible only to personnel who must use them in the performance of their official duties. Paper records are maintained in locked file cabinets, drawers, or offices in a locked building with controlled, monitored access. Personnel who use the records to perform their duties must complete Privacy Act/Personally Identifiable Information (PII) training prior to being granted access to records. Smart card technology is required to access records maintained on computer systems.''

**RETENTION AND DISPOSAL:**

Enrollee records (involving no serious accident or injury requiring emergency medical records) are sent to the Child and Youth Program Coordinator upon termination from the program and are destroyed 1 year later.

Enrollee records (involving a serious accident or injury requiring emergency medical records) are sent to the Child Development Services Coordinator upon termination from the program and are destroyed 3 years after the incident or 1 year after the enrollee withdraws from the program, whichever is later.

Employee and Volunteer Records are maintained at the Child Development Center and are destroyed 3 years after termination of employment or volunteer services.

**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with ''Director, Child and Youth Programs, Morale, Welfare and Recreation, Headquarters Defense Logistics Agency, 8725 John J. Kingman Road, *ATTN:* DES–Q, Fort Belvoir, VA 22060–6221.''

* * * * *

**RECORD SOURCE CATEGORIES:**

Delete entry and replace with ''Information is provided by the registrant, the registrant's sponsor, the sponsor's employer, the registrant's

physician or health care provider, and CDP employees.''

* * * * *

**S400.20**

**SYSTEM NAME:**

Day Care Facility Registrant, Applicant and Enrollee Records.

**SYSTEM LOCATION:**

Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6221 and the participating DLA Field Activities. Mailing addresses may be obtained from the System manager below.''

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals and their sponsors who are enrolled in, or have applied for admission to, DLA-managed day care facilities.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

*Waiting List Applicant* records include the names of the sponsor and spouse (when applicable), Social Security Numbers; home and electronic mail addresses; work, home, cell and pager telephone numbers; place of employment; rank or civilian pay grade; child's name and birth date documentation of any special needs or health concerns regarding the child, to include documentation of food restrictions; physical abilities and limitations; physical, emotional, or other special care requirements (including restrictions or special precautions concerning diet); special services Individual Development Plans (IDP) when special needs have already been diagnosed.

*Enrollees* records include all items listed above under ''Waiting List Applicant'' plus names and phone numbers of emergency points of contact; medical, dental and insurance provider data; medical examination reports, health assessments and screening results; immunization, allergy and medication information; documentation of Special Needs Resource Team (SNRT) meetings, recommendations and follow-up; documentation of behavioral issues; special services Individual Development Plans (IDP) (when applicable); child portfolios to include observations, anecdotal records, and developmental milestone checklists; parent/teacher conference data; parent complaints; transportation requirements and schedules; parental disabilities, impairments, or special needs; authorization, consent, and agreement forms; medical power of attorney; serious event/incident report forms; symptom records; escort and emergency designees' name and data to include physical and electronic addresses and work, home, cell, and pager telephone numbers; documentation of returned checks; status of hardship requests; family care plans to include documentation of guardianship and medical power of attorney in the absence of parent(s); and suspected/reported child abuse or neglect forms. The records may include child and family profiles which gather information on family background, cultural, and ethnic data such as religion, native language, and family composition for cultural and social enrichment activities. For fee assessment purposes, the application records also include family income data; documentation of disability if unemployed; and, for security purposes, court records with information on custody and visitation arrangements when applicable. **Note:** Any and all information relating to an individual's religious preference or religious activity is collected and maintained only if the individual has made an informed decision to voluntarily provide the information.

*Employee* records include their name; Social Security Number (SSN) and birth date; home address; home and cell telephone numbers; electronic mail address; names, telephone numbers and home addresses of emergency points of contact; health assessment, psychological evaluations, immunization records, and documentation of ongoing medication; verification of background checks and suitability determination; training records, educational background, and other related employment experiences; employment references; job performance standards, copies of appraisals, awards, promotions and grievance actions; copies of personnel actions; counseling statements as appropriate.

*Volunteer* records include their name; and birth date; home addresses; home, work and cell telephone numbers; electronic mail address; place of employment; names, telephone numbers and home addresses of emergency points of contact; health assessment, psychological evaluations, immunization records, and documentation of ongoing medication; verification of background checks and suitability determination; and training records.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 133, Under Secretary of Defense for Acquisition, Technology, and Logistics; 10 U.S.C. 2809 and 2812, Military construction of child care facilities; 42 U.S.C. Chap. 127, Coordinated services for children, youth, and families; 40 U.S.C. 490b, Child care services for Federal employees; 42 U.S.C. Chap 67, Child abuse programs; Pub. L. 101–189, Title XV, Military Child Care Act of 1989; DOD Instruction 6060.2, Child Development Programs; and E.O. 9397 (SSN).

**PURPOSE(S):**

With the exception of family income data, the records are available to the Child and Youth Program Coordinator, the CDP Director and Assistant Director, the CDP Training and Curriculum Specialist, and applicable administrative and care giving staff for the purpose of providing safe, developmentally appropriate day care services and to ensure proper, effective response in the event of an emergency. These records may also be made available to subject matter experts during inspections. Individualized data on total family income is provided to employing Defense components for fiscal planning purposes, for subsidy computation, and to reimburse DLA for day care services rendered under a support agreement. Verification of family income data is also used for fee assessment purposes and is made available to DLA representatives during inspections.

Serious Event Forms, Incident Report Forms, and monthly injury logs are provided to the Child and Youth Programs Coordinator, the CDP Director, and the installation's safety and health office for the purpose of tracking all accidents/incidents that occur within the CDP center or during sponsored activities off-site. These reports are also made available to safety and health professionals during inspections.

Records pertaining to physical abilities and limitations; physical, emotional or other special care requirements to include restrictions or special precautions concerning diet; existing IDPs; and documentation of behavioral issues or other special needs will be provided to members of the SNRT for the purpose of determining staff training needs, appropriate classroom placement, necessity of contract modification, and appropriate follow-up, to include collaboration with community resources as needed. Based upon the severity of the special need, the installation's paramedic squad will be notified of the child's enrollment at the CDC and the specific condition that may require attention. Records will also be available to subject matter experts during inspections.

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 physicians, dentists, medical technicians, hospitals, or health care providers in the course of obtaining emergency medical attention.

To Federal, state, and local officials involved with childcare or health services for the purpose of reporting suspected or actual child abuse.

To Federal, state, and local agencies and private sector entities that employ individuals who are registered to use the day care center for the purpose of verifying income. **Note:** Only name and data pertaining to reported total family income is disclosed to employing agencies and entities.

To State Public Health Authorities and/or the Center for Disease Control for the purpose of reporting communicable diseases. Information released does not contain any personally identifiable information.

The DOD ''Blanket Routine Uses'' apply to this system of records.

**DISCLOSURES TO CONSUMER REPORTING AGENCIES:**

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (14 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government; typically to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records.

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are stored on paper and in electronic storage media.

**RETRIEVABILITY:**

Records may be retrieved by the full name of the registrant/applicant/sponsor and Social Security Number. Volunteer records may be retrieved by their full name.

**SAFEGUARDS:**

Records are maintained in areas accessible only to personnel who must use them in the performance of their official duties. Paper records are maintained in locked file cabinets, drawers, or offices in a locked building with controlled, monitored access. Personnel who use the records to perform their duties must complete Privacy Act/Personally Identifiable Information (PII) training prior to being granted access to records. Smart card technology is required to access records maintained on computer systems.

**RETENTION AND DISPOSAL:**

Enrollee records (involving no serious accident or injury requiring emergency medical records) are sent to the Child and Youth Program Coordinator upon termination from the program and are destroyed 1 year later.

Enrollee records (involving a serious accident or injury requiring emergency medical records) are sent to the Child Development Services Coordinator upon termination from the program and are destroyed 3 years after the incident or 1 year after the enrollee withdraws from the program, whichever is later.

Employee and Volunteer Records are maintained at the Child Development Center and are destroyed 3 years after termination of employment or volunteer services.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Child and Youth Programs, Morale, Welfare and Recreation, Headquarters Defense Logistics Agency, 8725 John J. Kingman Road, *ATTN:* DES–Q, Fort Belvoir, VA 22060–6221.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about them is contained in this system should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, *ATTN:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiries from registrants/applicants/sponsors should contain their full name and Social Security Number. Inquiries from volunteers should contain their full name.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about them contained in this system should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, *ATTN:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiries from registrants/applicants/sponsors should contain their full name and Social Security Number. Inquiries from volunteers should contain their full name.

**CONTESTING RECORD PROCEDURES:**

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Office, Headquarters, Defense Logistics Agency, *ATTN:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

**RECORD SOURCE CATEGORIES:**

Information is provided by the registrant, the registrant's sponsor, the sponsor's employer, the registrant's physician or health care provider, volunteers, and CDP employees.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. E8–20058 Filed 8–28–08; 8:45 am]

**BILLING CODE 5001–06–P**

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## DEPARTMENT OF DEFENSE

### Department of the Air Force

**[Docket No. USAF–2008–0010]**

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Consideration will be given to all comments received by September 29, 2008.

*Title, Form, and OMB Number:* Air Force Academy Applications, United States Air Force Academy Form 149, OMB Number 0701–0087.

*Type of Request:* Extension.

*Number of Respondents:* 9.850.

*Responses per Respondent:* 1.

*Annual Responses:* 9,850.

*Average Burden per Response:* 30 minutes.

*Annual Burden Hours:* 4,925.

*Needs and Uses:* The information collection requirement is necessary to obtain data on candidate's background and aptitude in determining eligibility and selection to the Air Force Academy.

*Affected Public:* Individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Ms. Sharon Mar.

Written comments and recommendations on the proposed information collection should be sent to Ms. Mar at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503. Comments may be e-mail to Ms. Mar at *Sharon_Mar@omb.eop.gov*.

You may also submit comments, identified by docket number and title, by the following method:

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

*Instructions:* All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

*DOD Clearance Officer:* Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

August 22, 2008.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. E8–20018 Filed 8–28–08; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Department of the Air Force

**[Docket No. USAF–2008–0006]**

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Consideration will be given to all comments received by September 29, 2008.

*Title, Form, and OMB Number:* Nomination For Appointment To The United States Military Academy, Naval Academy or Air Force Academy; DD FORM 1870; OMB Control Number 0701–0026.

*Type of Request:* Extension.

*Number of Respondents:* 5,200.

*Responses per Respondent:* 1.

*Annual Responses:* 5,200.

*Average Burden per Response:* 30 minutes.

*Annual Burden Hours:* 2,600.

*Needs and Uses:* DD FM 1870 is used to implement the provisions of Title X, U.S.C. 4342, 6953 and 32 CFR part 901. Members of Congress, the Vice President and Delegates to Congress and Resident Commissioner of Puerto Rico use this form to nominate constituents to the three DoD Academies, West Point, Annapolis and Air Force. Data required is supplied by the prospective nominees to Members of Congress. Eligibility requirements are outlined in AFI 36–2019, Appointment to the United States Air Force Academy.

*Affected Public:* Individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits

*OMB Desk Officer:* Ms. Sharon Mar.

Written comments and recommendations on the proposed information collection should be sent to Ms. Mar at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503. Comments may be e-mail to Ms. Mar at *Sharon_Mar@omb.eop.gov*.

You may also submit comments, identified by docket number and title, by the following method:

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

*Instructions:* All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

*DOD Clearance Officer:* Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

August 22, 2008.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. E8–20019 Filed 8–28–08; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF ENERGY

### Environmental Management Advisory Board

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Advisory Board (EMAB). The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Thursday, September 25, 2008, 8:30 a.m.–5:30 p.m.

**ADDRESSES:** The Millennium Hotel Cincinnati, 150 West Fifth Street, Cincinnati, Ohio 45202–2393.

**FOR FURTHER INFORMATION CONTACT:** Terri Lamb, Designated Federal Officer, Environmental Management Advisory Board (EM–13), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Phone (202) 586–9007; fax (202) 586–0293 or e-mail: *terri.lamb@em.doe.gov*.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to provide the Assistant Secretary for Environmental Management with advice and recommendations on corporate issues confronting the Environmental Management Program. The Board will contribute to the effective operation of the Environmental Management Program by providing individual citizens and representatives of interested groups an opportunity to present their views on issues facing the Office of Environmental Management and by helping to secure consensus recommendations on those issues.

**Tentative Agenda**

- EM Consolidated Business Center.
- EM Program Update.
- EM Strategic Planning.
- EM Human Capital Initiatives.
- Acquisition and Project Management.
- EM Communications.
- Board Business and Subcommittee Reports.

*Public Participation:* The meeting is open to the public. Written statements may be filed either before or after the

meeting with the Designated Federal Officer, Terri Lamb, at the address or telephone listed above. Individuals who wish to make oral statements pertaining to agenda items should also contact Terri Lamb. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

*Minutes:* Minutes will be available by writing or calling Terri Lamb at the address or phone number listed above. Minutes will also be available at the following Web site *http://www.em.doe.gov/stakepages/emabmeetings.aspx*.

Issued at Washington, DC on August 26, 2008.

**Rachel Samuel,**

*Deputy Committee Management Officer.*

[FR Doc. E8–20121 Filed 8–28–08; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### National Petroleum Council, Office of Fossil Energy

### National Petroleum Council

**AGENCY:** Department of Energy, Office of Fossil Energy.

**ACTION:** Notice of Open Meeting.

This notice announces a meeting of the National Petroleum Council (NPC). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that notice of these meetings be announced in the **Federal Register**.

**DATES:** Wednesday, September 17, 2008, 9 a.m.

**LOCATION:** The Fairmont, Washington, DC, 2401 M Street, NW., Washington, DC 20037.

**FOR FURTHER INFORMATION CONTACT:** James Slutz, U.S. Department of Energy, Office of Oil and Natural Gas, Washington, DC 20585. Phone: 202–586–5600.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Committee:* To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industry.

**Tentative Agenda:**

- Call to Order and Introductory Remarks.
- Remarks by the Honorable Samuel W. Bodman, Secretary of Energy.
- Review Status of the National Petroleum Council *Hard Truths* Report.
- Administrative Matters.
- Discussion of Any Other Business Properly Brought Before the National Petroleum Council.
- Adjournment.

*Public Participation:* The meeting is open to the public. The Chairman of the Committee will conduct the meeting to facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement to the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact James Slutz at the address or telephone number listed above. Request must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

*Transcripts:* Available for public review and copying at the Public Reading Room, Room 1G–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on August 26, 2008.

**Rachel Samuel,**

*Deputy Committee Management Officer.*

[FR Doc. E8–20120 Filed 8–28–08; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 13175–000]**

### FFP Ohio River 22, LLC; Notice of Preliminary Permit Applications Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications

August 22, 2008.

On April 15, 2008, FFP Ohio River 22, LLC each filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Ohio River 22 Project, to be located on the Ohio River in Dearborn County, Indiana and Boone County, Kentucky.

The proposed Ohio River 22 Project consists of: (1) 3,240 proposed 20 kilowatt Free Flow generating units having a total installed capacity of 64.8 megawatts, (2) a proposed transmission line, and (3) appurtenant facilities. The FFP Ohio River 22, LLC, project would have an average annual generation of 283.82 gigawatt-hours and be sold to a local utility.

*Applicant Contact*: Mr. Dan Irvin, FFP Ohio River 22, LLC, 69 Bridge Street, Manchester, MA 01944, phone (978) 232–3536.

*FERC Contact:* Robert Bell, (202) 502–6062.

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–13175) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E8–20048 Filed 8–28–08; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 13166–000]**

### FFP Ohio River 14, LLC; Notice of Preliminary Permit Applications Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications

August 22, 2008.

On April 15, 2008, FFP Ohio River 14, LLC each filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Ohio River 12 and Ohio River 8 Projects, to be located on the Ohio River in Clark and Jefferson Counties, Indiana and Trimble County, Kentucky.

The proposed Ohio River 14 Project consists of: (1) 3,900 proposed 20 kilowatt Free Flow generating units having a total installed capacity of 78 megawatts, (2) a proposed transmission line, and (3) appurtenant facilities. The FFP Ohio River 14, LLC, project would have an average annual generation of 341.6 gigawatt-hours and be sold to a local utility.

Applicant Contact: Mr. Dan Irvin, FFP Ohio River 14, LLC, 69 Bridge Street, Manchester, MA 01944, phone (978) 232–3536.

*FERC Contact:* Robert Bell, (202) 502–6062.

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–13166) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E8–20051 Filed 8–28–08; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 13168–000, Project No. 13169–000]**

### FFP Ohio River 16, LLC, FFP Ohio River 17, LLC; Notice of Preliminary Permit Applications Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications

August 22, 2008.

On April 15, 2008, FFP Ohio River 16, LLC and FFP Ohio River 17, LLC each filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Ohio River 16 and Ohio River 17 Projects, to be located on the Ohio River in Switzerland County, Indiana and Carroll County, Kentucky.

*The proposed Ohio River 16 Project consists of:* (1) 1,890 proposed 20 kilowatt Free Flow generating units having a total installed capacity of 37.8 megawatts, (2) a proposed transmission line, and (3) appurtenant facilities. The FFP Ohio River 16, LLC, project would have an average annual generation of 165.56 gigawatt-hours and be sold to a local utility.

*The proposed Ohio River 17 Project consists of:* (1) 1,560 proposed 20 kilowatt Free Flow generating units having a total installed capacity of 31.2 megawatts, (2) a proposed transmission line, and (3) appurtenant facilities. The FFP Ohio River 17, LLC, project would have an average annual generation of 136.66 gigawatt-hours and be sold to a local utility.

*Applicant Contact:* Mr. Dan Irvin, FFP Ohio River 16, LLC and FFP Ohio River 17, LLC, 69 Bridge Street, Manchester, MA 01944, phone (978) 232–3536.

*FERC Contact:* Robert Bell, (202) 502–6062.

*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–13168 or P–13169) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E8–20050 Filed 8–28–08; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 13173–000]**

### FFP Ohio River 21, LLC; Notice of Preliminary Permit Applications Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications

August 22, 2008.

On March 25, 2008, FFP Ohio River 21, LLC each filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Ohio River 21 Project, to be located on the Ohio River in Ohio County, Indiana and Boone County, Kentucky.

The proposed Ohio River 21 Project consists of: (1) 1,020 proposed 20 kilowatt Free Flow generating units having a total installed capacity of 20.4 megawatts, (2) a proposed transmission line, and (3) appurtenant facilities. The FFP Ohio River 21, LLC, project would have an average annual generation of 89.35 gigawatt-hours and be sold to a local utility.

*Applicant Contact:* Mr. Dan Irvin, FFP Ohio River 21, LLC, 69 Bridge Street, Manchester, MA 01944, phone (978) 232–3536.

*FERC Contact:* Robert Bell, (202) 502–6062.

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–13173) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E8–20049 Filed 8–28–08; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No.: 2801–027]**

### Littleville Power Company, Inc.; Notice Soliciting Scoping Comments

August 22, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* P–2801–027.

c. *Date filed:* October 31, 2007.

d. *Applicant:* Littleville Power Company, Inc.

e. *Name of Project:* Glendale Hydroelectric Project.

f. *Location:* On the Housatonic River in the Town of Stockbridge, Berkshire County. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Kevin M. Webb, Environmental Affairs Coordinator, Littleville Power Company, Inc., One Tech Drive, Suite 220, Andover, MA 01810, (978) 681–1900 ext. 809, *kevin.webb@northamerica.enel.it*.

i. *FERC Contact:* Kristen Murphy, (202) 502–6236 or *kristen.murphy@ferc.gov*.

j. *Deadline for filing scoping comments:* September 22, 2008.

*All documents (original and eight copies) should be filed with:* Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. *As licensed, the existing Glendale Project consists of:* (1) A 250-foot long, 30-foot high concrete gravity dam with a 182-foot-long spillway; (2) a 23-acre reservoir; (3) two manually operated 10 by 10-foot intake gates; (4) a 1,500-foot long, 40-foot wide intake canal; (5) a forebay structure and a 250-foot long, 12-foot diameter steel penstock; (6) a powerhouse with four turbines with a combined installed capacity of 1,140-kilowatts; (7) a 300-foot long tailrace channel; (8) a step-up transformer and an 83-foot-long 13.8 kilovolt transmission line; and (9) appurtenant facilities. The Housatonic River reach that is bypassed by the project (measured from the gatehouse to the tailrace channel) is about 2,500 feet long.

The proposed project would include a new 165-kW turbine unit in the waste gate slot located at the gatehouse adjacent to the project dam. This unit would operate off of a proposed minimum bypassed reach flow of 90 cubic feet per second (cfs) or inflow. In addition, the proposed project would provide additional recreational access through formal canoe portage facilities and parking.

The applicant estimates that the total average annual generation, with the proposed additional turbine, would be 5,800 megawatt-hours. The applicant proposes to continue to operate the project in run-of-river mode with an increase in minimum flow in the bypass reach from 10 cfs to 90 cfs or inflow, whichever is less. The purpose of the project is to produce electrical power for sale.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. Scoping Process

The Commission staff intends to prepare a single environmental assessment (EA) for the Glendale Hydroelectric Project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Commission staff does not propose to conduct any on-site scoping meetings at this time. Instead, we are soliciting comments, recommendations, and information, on the scoping document issued on August 22, 2008.

Copies of the scoping document outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list and the applicant's distribution list. Copies of the scoping document may 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, call 1–866–208–3676 or for TTY, (202) 502–8659.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E8–20047 Filed 8–28–08; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP07–417–002]**

### Texas Gas Transmission, LLC; Notice of Application

August 22, 2008.

Take notice that on August 22, 2008, Texas Gas Transmission, LLC (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in the above referenced docket an application pursuant to section 7(c) of the Natural Gas Act (NGA), and section 157 of the Commission's regulations to amend the certificate of public convenience and necessity issued on May 2, 2008, in Docket No. CP07–417–000. Specifically, Texas Gas requests authorization to increase in the maximum design capability of the Fayetteville Lateral, located in Arkansas and Mississippi, from 841,000 MMBtu per day to 967,000 MMBtu/d, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll

free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Kathy D. Fort, Manager, Certificates and Tariffs, Texas Gas Transmission, LLC, 3800 Frederica Street, Owensboro, Kentucky 42301 at (270) 688–6825.

*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 29, 2008.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E8–20053 Filed 8–28–08; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. ER07–501–010; ER08–649–005; ER06–739–014; ER06–738–014]**

### Birchwood Power Partners, L.P., EFS Parlin Holdings LLC, Linden Holding L.L.C., Technologies Linden Venture L.P.; Notice of Filing

August 22, 2008.

Take notice that on June 27, 2008, Birchwood Power Partners, L.P., EFS Parlin Holdings LLC, Linden Holding L.L.C. and Technologies Linden Venture L.P. filed a triennial market power analysis pursuant to the Commission's Order 697.

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 29, 2008.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E8–20052 Filed 8–28–08; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. RP08–426–000; RP08–426–001]**

### El Paso Natural Gas Company; Notice of Technical Conference

August 22, 2008.

On June 30, 2008, El Paso Natural Gas Company (El Paso) filed revised tariff sheets pursuant to section 4 of the Natural Gas Act and Part 154 of the Commission's regulations. In its filing, El Paso proposes a number of new services, a rate increase for existing services, and changes in certain terms and conditions of service. On August 5, 2008, the Commission issued an order [1] accepting and suspending the tariff sheets, subject to refund and conditions, establishing hearing procedures, and establishing a technical conference. In that order, the Commission directed the Staff to convene a technical conference to address the proposed services and terms and conditions reflected in El Paso's filing.

Take notice that a technical conference to discuss issues raised by El Paso's filing will be held on Thursday, September 11, 2008 at 9 a.m. (EST) and Friday, September 12, 2008 at 9 a.m. (EST), in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. If necessary, the conference will continue on Tuesday, October 21, 2008 at 9 a.m. (EST) and Wednesday, October 22, 2008 at 9 a.m. (EST).

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

All parties and staff are permitted to attend. For further information please contact April Ballou at (202) 502–6537 or *April.Ballou@ferc.gov.*

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E8–20046 Filed 8–28–08; 8:45 am]

**BILLING CODE 6717–01–P**

[1] 124 FERC ¶ 61,124 (2008).

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2008–0506; FRL–8378–6]**

### Sodium Hydroxide (Mineral Bases, Strong) and Capric (Decanoic) Acid; Antimicrobial Registration Review Final Work Plans and Proposed Registration Review Decisions; Notice of Availability

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

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of EPA's Final Work Plans and Proposed Registration Review Decisions for the pesticides cases Capric (Decanoic) Acid and Sodium Hydroxide (Mineral Bases, Strong), and opens a public comment period on the proposed registration review decisions. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, that the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

**DATES:** Comments must be received on or before October 28, 2008.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) numbers EPA–HQ–OPP–2007–0922 for Sodium Hydroxide (Mineral Bases, Strong) and EPA–HQ–OPP–2007–1040 for Capric (Decanoic) Acid, by one of the following methods:

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

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

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

*Instructions*: Direct your comments to docket ID numbers and the regulatory contacts listed under Table 1 for each of the cases to which you are submitting a comment. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket*: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal

holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** For information about the pesticides included in this document, contact the specific Chemical Review Manager as identified in the table in Unit II. for the pesticide of interest.

For general questions on the registration review program, contact Kevin Costello, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5026; fax number: (703) 308–8090; e-mail address: *costello.kevin@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. What Should I Consider as I Prepare My Comments for EPA?*

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

2. *Tips for preparing your comments.* When submitting comments, remember to:

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

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

## II. Background

### *A. What Action is the Agency Taking?*

This notice opens a 60–day public comment period on the subject proposed registration review decisions. The Agency is proposing registration review decisions for the pesticide cases shown in the following Table.

REGISTRATION REVIEW DOCKETS — PROPOSED FINAL DECISIONS

| Registration Review Case Name and Number | Pesticide Docket ID Number | Regulatory Contact name, Phone Number, E-mail Address |
|---|---|---|
| Case 4065; Sodium Hydroxide (Mineral Bases, Strong) | EPA–HQ–OPP–2007–0922 | Diane Isbell; (703) 308–8154; *isbell.diane@epa.gov* |
| Case 5038; Capric (Decanoic)Acid | EPA–HQ–OPP–2007–1040 | Eliza Blair; (703) 308–7279 *blair.eliza@epa.gov* |

The dockets for registration review of these pesticide cases include earlier documents related to the registration review of the subject cases. For example, the review opened with the posting of a Summary Document, containing a Preliminary Work Plan (PWP), for public comment. Because no comments were received, and because the Agency required no further risk assessments to complete registration review of these cases, the Final Work Plan and Proposed Decision were combined into a single document. The documents in the initial docket described the Agency's rationale for not conducting new risk assessments for the registration review of Sodium Hydroxide (Mineral Bases, Strong) and Capric (Decanoic) Acid. These proposed registration review decisions now included in the dockets continue to be supported by those rationales included in documents in the initial dockets. Following public comment, the Agency will issue a final registration review decision for each case.

The registration review program is being conducted under congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. Section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended in 1996 required EPA to establish by regulation procedures for reviewing pesticide registrations, originally with a goal of reviewing each pesticide's registration every 15 years to ensure that a pesticide continues to meet the FIFRA standard for registration. The Agency's final rule to implement this program was issued in August 2006 and became effective in October 2006 and appears at 40 CFR part 155.40 *et seq.* The Pesticide Registration Improvement Act of 2003 (''PRIA'') was amended and extended in September 2007. FIFRA as amended by PRIA in 2007 requires EPA to complete registration review decisions by October 1, 2022 for all pesticides registered as of October 1, 2007. The registration review final rule provides for a minimum 60–day public comment period for all proposed registration review decisions. This comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the proposed decision(s). All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. These comments will become part of the Agency Dockets for Sodium Hydroxide

(Mineral Bases, Strong) and Capric (Decanoic) Acid. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. The Agency will carefully consider all comments received by the closing date and will provide a Response to Comments Memorandum in the Dockets and *www.regulations.gov*. The final registration review decisions will explain the effect that any comments have had on the decisions.

Background on the registration review program is provided at: *http://www.epa.gov/oppsrrd1/registration_review/*. Quick links to earlier documents related to the registration review of this pesticide are provided at: *http://www.epa.gov/oppsrrd1/registration_review/reg_review_status.htm/*.

*B. What is the Agency's Authority for Taking this Action?*

FIFRA Section 3(g) and 40 CFR part 155.40 *et seq.* provide authority for this action.

**List of Subjects**

Environmental protection, Pesticides and pests, Antimicrobials, capric acid, sodium hydroxide, Registration review.

Dated: August 22, 2008.

**Frank Sanders,**

*Director, Antimicrobials Division, Office of Pesticide Programs.*

[FR Doc. E8–20152 Filed 8–28–08; 8:45 am]

**BILLING CODE 6560–50–S**

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## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2005–0162; FRL–8380–6]**

## Carbofuran; Notice of Availability of Revised Surface Water Exposure Assessment

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

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of EPA's revised surface water exposure assessment for the pesticide carbofuran. This revised assessment reflects the most current soil input parameters for the surface water exposure modeling done for the dietary risk assessment for carbofuran. While the underlying information based on soil type has been updated, the Agency's ultimate risk conclusions have not changed. The new drinking water exposure assessment dated August 20, 2008, entitled ''Updated Refinements of the Drinking Water Exposure Assessment for the Use of Carbofuran on Corn and Melons,'' is in the carbofuran docket.

**FOR FURTHER INFORMATION CONTACT:** Jude Andreasen, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9342; fax number: (703) 308–7070; e-mail address: *andreasen.jude@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

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

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

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

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2005–0162. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

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*.

### II. Background

*A. What Action is the Agency Taking?*

Upon further review of its underlying assessments, the Agency has updated its drinking water exposure assessment for the pesticide carbofuran to reflect the most current soil input parameters for the surface water source drinking water exposure modeling. Soil information for 8 of the 11 scenarios has been updated to more closely resemble soils in the areas where the scenarios for these crops were modeled. Of the 11 scenarios, 2 resulted in concentrations that remained largely unchanged (Minnesota corn and Nebraska corn); and 6 scenarios resulted in concentrations that decreased slightly (Iowa corn, Indiana corn, Kansas corn, Michigan melon, Missouri melon, and New Jersey melon). The remaining 3 scenarios (Illinois corn, Texas corn, and Florida melons) were not modified and remain unchanged. Despite the revisions to certain of the underlying assessments from use of the more recent soil types, the Agency's ultimate risk conclusions regarding carbofuran's overall dietary risks remain unchanged. EPA is providing notice of its revised assessments to allow the public the opportunity to comment on the Agency's revisions during the comment period on its proposed tolerance revocations.

The updated exposure assessment, dated August 20, 2008, entitled ''Updated Refinements of the Drinking Water Exposure Assessment for the Use of Carbofuran on Corn and Melons,'' is in the carbofuran docket (EPA–HQ–OPP–2005–0162) at *http://www.regulations.gov*.

*B. What is the Agency's Authority for Taking this Action?*

21 U.S.C. 346a(e).

**List of Subjects**

Environmental protection, Agricultural commodities, Pesticides and pests.

Dated: August 22, 2008.

**William R. Diamond,**

*Acting Director, Office of Pesticide Programs.*

[FR Doc. E8–20001 Filed 8–28–08; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–8585–2]**

### 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. 20080218, ERP No. D–AFS–J65517–SD, West Rim Project, Proposes To Implement Multiple Resource Management Actions, Northern Hills Ranger District, Black Hills National Forest, Lawrence County, SD.

*Summary:* EPA expressed environmental concerns about impacts to water quality, aquatic resources, and wildlife habitats. Rating EC2.

EIS No. 20080220, ERP No. D–FHW–K40268–CA, Jepson Parkway Project, Proposes To Upgrade and Link a Series of Existing Two and Four-Lane Roadways, Right-of-Way, Endangered Species Act Section 7 and U.S. Army COE Section 404 Permits, Solano County, CA.

*Summary:* EPA expressed environmental concerns about impacts to wetlands, air quality, and wildlife habitat. EPA is also concerned about indirect impacts from induced growth. Rating EC2.

EIS No. 20080225, ERP No. D–AFS–J65518–SD, South Project Area, Proposes Multiple Resource Management Actions, Hell Canyon Ranger District, Black Hills National Forest, Custer County, SD.

*Summary:* EPA expressed environmental concerns about the potential environmental impacts to water quality and habitat from Mountain Pine Bark (MPB) beetle epidemics. The final EIS should consider land-use activities that enhance forest heterogeneity and thus potentially reduce susceptibility to bark beetle outbreaks and the associated impacts to water quality and habitat. Rating EC2.

EIS No. 20080237, ERP No. D–NPS–J65519–SD, Wind Cave National Park Project, Elk General Management Plan, Implementation, Custer County, SD.

*Summary:* EPA has no environmental objections to the preferred Alternative (B). Rating LO.

EIS No. 20080243, ERP No. DP–USN–E11066–00, Jacksonville Range Complex Project, To Support and Conduct Current and Emerging Training and RDT&E Operations, NC, SC, GA and FL.

*Summary:* EPA expressed environmental concerns about the effect of the Navy's training activities primarily associated with the deposition of expended training materials and their accumulation over time. EPA requested additional monitoring commitments to address these concerns. Rating EC2.

EIS No. 20080251, ERP No. D–AFS–K65342–CA, Moonlight and Wheeler Fires Recovery and Restoration Project, Proposes To Harvest Fire-Killed Merchantable Trees on 15,568 Acres, Mt. Hough Ranger District, Plumas National Forest, Plumas County, CA.

*Summary:* EPA expressed environmental objections about impacts to water quality and the watershed. EPA requested that the Final EIS should consider an alternative that minimizes adverse impacts to the damaged watershed, and prioritizes the removal of highly valued timber first. Rating EO2.

EIS No. 20080252, ERP No. D-DHS-A10077–00, National Bio and Agro-Defense Facility, Propose To Site, Construct and Operate at one of the Proposed Locations: (1) South Milledge Avenue Site, Clarke County, GA; (2) Manhattan Campus Site, Riley County, KS; (3) Flora Industrial Park Site, Madison County, MS; (4) Plum Island Site, Suffolk County, NY; (5) Umstead Research Park Site, Granville County, NC; and (6) Texas Research Park Site, Bexar and Medina Counties, TX.

*Summary:* EPA does not object to the proposed project. Rating LO.

EIS No. 20080256, ERP No. D–NOA–E91024–00, Amendment 29 Reef Fish Fishery Management Plan, Effort Management in the Commercial Grouper and Tilefish Fisheries, Reducing Overcapacity, Gulf of Mexico.

*Summary:* While EPA has no objections with the proposed action, EPA requested clarification on environmental justice issues. Rating LO.

EIS No. 20080257, ERP No. D–FAA–G52000–NM, Spaceport America Commercial Launch Site, Proposal To Develop and Operate, Issuance of License, Sierra County, NM.

*Summary:* EPA does not object to the preferred action. Rating LO.

EIS No. 20080217, ERP No. DA–COE–K32046–CA, Pacific Los Angeles Marine Terminal Crude Oil Marine Terminal, Construction and Operation of a New Marine Terminal from Pier 400, Berth 408 Project, U.S. Army COE section 10 and 404 Permits, Port of Los Angeles, Los Angeles County, CA.

*Summary:* EPA expressed concerns about impacts to air quality, environmental justice communities, and aquatic/biological resources. Rating EC2.

EIS No. 20080172, ERP No. DS–COE–K60037–CA, Rio del Oro Specific Plan Project, New Information on Biological Resource and Water Supply, City of Rancho Cordova, Sacramento County, CA.

*Summary:* EPA expressed environmental concerns about impacts to wetlands, waters of the U.S., and habitat resources. EPA recommends efforts to maximize water conservation and integrate water use efficiencies through ''green infrastructure'' into the design of the development. Rating EC2.

**Final EISs**

EIS No. 20080265, ERP No. F1–DOE–A06181–00, Rail Alignment for the Construction and Operation of a Railroad in Nevada to a Geologic Repository (DOE/EIS–0369) at Yucca Mountain, Nye County, NV.

*Summary:* While EPA's previous concerns were resolved, EPA requested clarification on compensatory wetland mitigation options. EPA also recommended the development/implementation of a monitoring and management plan consistent with the requirements of the Wetlands Compensatory Mitigation Rule and Army COE guidelines.

EIS No. 20080255, ERP No. F–AFS–J65395–UT, Indian Springs Road Realignment, Reducing Adverse Impacts to Watershed and Fisheries, U.S. Army COE Section 404 Permit, Uinta-Wasatch-Cache National Forest, Wasatch County, UT.

*Summary:* The Final EIS addressed EPA's previous environmental concerns with mitigation measures and road closures including, education, signage and restoration of non-authorized roadways in the Inventoried Roadless Areas.

EIS No. 20080270, ERP No. F–NSF–A12045–00, PROGRAMMATIC—Integrated Ocean Drilling Program—

United States Implementing Organizations Participation in the Development of Scientific Ocean Drilling, IODP-USIO.

*Summary:* EPA has no objection to the proposed action.

EIS No. 20080273, ERP No. F-FRC-E03018-FL, Floridian Natural Gas Storage Project, Construction and Operation, Liquefied Natural Gas (LNG) Storage and Natural Gas Transmission Facilities, Martin County, FL.

*Summary:* EPA continues to have concerns about environmental justice issues.

EIS No. 20080285, ERP No. F–NPS–J65474–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.

*Summary:* EPA does not object to the preferred alternative.

EIS No. 20080299, ERP No. F–IBR–K91014–CA, American Basin Fish Screen and Habitat Improvement Project, Construction and Operation of one or two Positive-Barrier Fish Screen Diversion Facilities, Funding and U.S. Army COE Section 10 and 404 Permits, Natomas Mutual, Sacramento and Sutter Counties, CA.

*Summary:* No formal comment letter was sent to the preparing agency.

EIS No. 20080264, ERP No. FA–DOE–A06181–00, Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada—Nevada Rail Transportation Corridor (DOE/EIS–0250F–S2).

*Summary:* EPA does not object to the proposed project.

EIS No. 20080266, ERP No. FS–DOE–A06181–00, Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste, Construction, Operation, Monitoring and Eventually Closing a Geologic Repository (DOE/EIS–0250F–S1D) at Yucca Mountain, Nye County, NV.

*Summary:* The final SEIS has addressed EPA's concerns about the language regarding EPA's radiation protection standards and the explanation of DOE's determination of the appropriate strain rates to be incorporated into the conceptual seismic model; therefore, EPA does not object to the proposed project.

EIS No. 20080284, ERP No. FS–USA–A15000–00, PROGRAMMATIC—Army Growth and Force Structure Realignment, Evaluation of Alternatives for Supporting the Growth, Realignment, and Transformation of the Army To Support Operational in the Pacific Theater, Implementation, Continental United States and Pacific Region of Alaska and Hawaii.

*Summary:* EPA does not object to the proposed project.

Dated: August 26, 2008.

**Ken Mittelholtz,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. E8–20123 Filed 8–28–08; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–8585–1]**

## Environmental Impact Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/.*

### Weekly Receipt of Environmental Impact Statements

Filed 08/18/2008 Through 08/22/2008. Pursuant to 40 CFR 1506.9.

EIS No. 20080326, Draft Supplement, FHW, NC, US 74 Relocation, from US–129 in Robbinsville to NC 28 in Stecoah, Funding and U.S. Army COE Section 404 Permit, Transportation Improvement Program Project No. A–9 B&C, Graham County, NC, *Comment Period Ends:* 10/14/2008, *Contact:* John F. Sullivan 919–856–4346.

EIS No. 20080327, Draft EIS, FHW, MT, Russell Street/South 3rd Street Reconstruction Project, To Address Current and Projected Safety and Operational needs, Funding and U.S. Army COE Section 404 Permit, City of Missoula, Missoula County, MT, *Comment Period Ends:* 10/20/2008, *Contact:* Lloyd H. Rue 406–449–5302.

EIS No. 20080328, Final EIS, BLM, UT, Price Field Resource Management Plan, Selected the Preferred Alternative D, Non-Wilderness Study Area (WSA) Lands with Wilderness Characteristics. Implementation, Carbon and Emery Counties, UT, *Wait Period Ends:* 09/29/2008, *Contact:* Floyd L. Johnson 435–636–3600.

EIS No. 20080329, Final EIS, AFS, NM, Santa Fe National Forest Project, *Settlement Land Transfers:* Pueblo de San lldefonso, Pueblo of Santa Clara and Los Alamos County, Implementation, Santa Fe National Forest, Los Alamos, Rio Arriba and Santa Fe Counties, NM, *Wait Period Ends:* 09/29/2008, *Contact:* Sandy Hurlocker 505–753–7331.

EIS No. 20080330, Draft Supplement, COE, NC, Topsail Beach Interim (Emergency) Beach Fill Project—Permit Request, Proposal to Place Sand on 4.7 miles of the Town's Shoreline to Protect the Dune Complex and Oceanfront Development, Onslow and Pender Counties, NC, *Comment Period Ends:* 10/14/2008, *Contact:* S. Kenneth Jolly 910–251–4630.

EIS No. 20080331, Draft EIS, NOA, 00, Proposed Acceptable Biological Catch (ABC) and Optimum Yield (OY) Specifications and Management Measures for the 2009–2010 Pacific Coast Groundfish Fishery Management Plan, Implementation, WA, OR and CA, *Comment Period Ends:* 10/14/2008, *Contact:* Robert Lohn 206–526–6150.

EIS No. 20080332, Final EIS, FHW, WA, Interstate 90 Snoqualmie Pass East Project, Proposes to Improve a 15-mile Portion of I–90 from Milepost 55.10 in Hyak to Milepost 70.3 New Easton, Funding, U.S. Army COE Section 404 Permit and NPDES Permit, Kittitas County, WA, *Wait Period Ends:* 09/29/2009, *Contact:* Liana Liu 360–753–9553.

EIS No. 20080333, Draft EIS, IBR, CO, Windy Gap Firming Project, Construct a New Water Storage Reservoir to Deliver Water to Front Range and West Slope Communities and Industries, Funding, NPDES and U.S. Army COE Section 404 Permit, Grand and Larimer Counties, CO, *Comment Period Ends:* 10/28/2008, *Contact:* Will Tully 970–962–4368.

EIS No. 20080334, Final EIS, NOA, 00, North Atlantic Right Whale Ship Strike Reduction Strategy, To Implement the Operational Measures to Reduce the Occurrence and Severity of Vessel Collisions with the Right Whale, Serious Injury and Deaths Resulting from Collisions with Vessels, *Wait Period Ends:* 09/29/2008, *Contact:* David Cottingham 301–713–2322.

EIS No. 20080335, Final EIS, BLM, 00, Alabama and Mississippi Resource Management Plan, Analyzes Management Alternatives for the Public Land and Resources, in Portions of the States of Alabama and Mississippi, *Wait Period Ends:* 09/29/2008, *Contact:* Brenda Hudgen-Williams 202–452–5112.

### Amended Notices

EIS No. 20080325, Final EIS, NRC, NC, Generic—License Renewal of Nuclear

Plants (GEIS) Regarding Shearon Harris Nuclear Power Plant, Unit 1, Plant-Specific Supplement 33 to NUREG–1437, Wake County, NC, *Wait Period Ends:* 09/22/2008, *Contact:* Samuel Hernandez 301–415–4049 Revision to FR Notice Published 08/22/2008. Correction to the state from CA to NC.

Dated: August 26, 2008.

**Ken Mittelholtz,**

*Environmental Protection Specialist, Office of Federal Activities.*

[FR Doc. E8–20127 Filed 8–28–08; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8709–8]**

## Clean Air Act Advisory Committee (CAAAC): Notice of Meeting

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of meeting.

**SUMMARY:** The Environmental Protection Agency (EPA) established the Clean Air Act Advisory Committee (CAAAC) on November 19, 1990, to provide independent advice and counsel to EPA on policy issues associated with implementation of the Clean Air Act of 1990. The Committee advises on economic, environmental, technical scientific, and enforcement policy issues.

**DATES AND ADDRESSES:** Open meeting notice; pursuant to 5 U.S.C. App. 2 section 10(a)(2), notice is hereby given that the Clean Air Act Advisory Committee will hold its next open meeting on Thursday, September 18, 2008. The meeting is open to the public to attend and will begin at approximately 8:30 a.m. to 4 p.m. at the DoubleTree Hotel at 300 Army Navy Drive, in Arlington, Virginia. The Subcommittee meetings will be held on September 17, 2008 and will begin at approximately 8:30 a.m. to 4:30 p.m. at the same location as the full Committee. Seating will be available on a first come, first served basis. The agenda for the CAAAC full committee meeting on September 18, 2008, will be posted on the Clean Air Act Advisory Committee Web site at *http://www.epa.gov/oar/caaac/.*

*Inspection of Committee Documents:* The Committee agenda and any documents prepared for the meeting will be publicly available at the meeting. Thereafter, these documents, together with CAAAC meeting minutes, will be available by contacting the Office of Air and Radiation Docket and requesting information under docket OAR–2004–0075. The Docket office can be reached by telephoning 202–566–1742; Fax 202–566–9744.

**FOR FURTHER INFORMATION CONTACT:** Concerning the CAAAC, please contact Pat Childers, Office of Air and Radiation, U.S. EPA (202) 564–1082, Fax (202) 564–1352 or by mail at U.S. EPA, Office of Air and Radiation (Mail code 6102 A), 1200 Pennsylvania Avenue, NW., Washington, DC 20004. For information on the Subcommittees, please contact the following individuals: (1) Permits/NSR/Toxics Integration—Liz Naess, (919) 541–1892; (2) Economic Incentives and Regulatory Innovations— Pat Childers, (202) 564–1082; and (3) Mobile Source Technical Review—John Guy, (202) 343–9276. Additional Information on these meetings, CAAAC, and its Subcommittees can be found on the CAAAC Web site: *http://www.epa.gov/oar/caaac/.*

For information on access or services for individuals with disabilities, please contact Mr. Pat Childers at (202) 564–1082 or *childers.pat@epa.gov.* To request accommodation of a disability, please contact Mr. Childers, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: August 25, 2008.

**Pat Childers,**

*Designated Federal Official, Clean Air Act Advisory Committee, Office of Air and Radiation.*

[FR Doc. E8–20124 Filed 8–28–08; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2008–0600; FRL–8379–2]**

## Notice of Receipt of a Pesticide Petition Filed for Residues of Pesticide Chemicals in or on Various Commodities

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

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

**DATES:** Comments must be received on or before September 29, 2008.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2008–0600 and the pesticide petition number (PP) 8F7403, by one of the following methods:

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

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

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

*Instructions*: Direct your comments to docket ID number EPA–HQ–OPP–2008–0600. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket*: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is

restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:**

Dianne Morgan, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305–6217; e-mail address: *morgan.dianne@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

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

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

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

### *B. What Should I Consider as I Prepare My Comments for EPA?*

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

2. *Tips for preparing your comments.* When submitting comments, remember to:

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

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

## II. What Action is the Agency Taking?

EPA is printing notice of the filing of a pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that the pesticide petition described in this notice contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner, is included in a docket EPA has created for this rulemaking. The docket for this petition is available on-line at *http://www.regulations.gov*.

### *New Tolerance*

*PP 8F7403.* (EPA–HQ–OPP–2008–0600). Dow AgroSciences, LLC, 9330 Zionsville Rd., Indianapolis, IN 46268, proposes to establish a permanent tolerance for the combined residues of the herbicide cyhalofop, cyhalofop-butyl, R-(+)-n-butyl-2-[4(4-cyano-2-fluorophenoxy)-phenoxy)propionate, plus cyhalofop acid, R-(+)-2-(4(4-cyano-2-fluorophenoxy)-phenoxy)propionicacid) and the di-acid metabolite, (2R)-4-4-(1-carboxyethoxy)phenoxy]-3-fluorobenzoic acid, in or on rice, grain at 0.03 parts per million (ppm) and rice, straw at 8.0 ppm. An adequate analytical method is available for enforcement purposes; the method has been developed and validated to determine the residues of cyhalofop-butyl, cyhalofop (acid form) and the di-acid metabolite in rice grain, straw and processed products. The method was based on capillary gas chromatography with mass selective detection. Limits of detection were 0.005 or 0.006 ppm depending on the analyte and matrix.

## List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 15, 2008.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. E8–20002 Filed 8–28–08; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2008–0518; FRL–8380–5]**

## Chloropicrin, Dazomet, Metam Sodium/Potassium, and Methyl Bromide Reregistration Eligibility Decisions; Notice of Availability; Extension of Comment Period

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

**ACTION:** Notice; extension of comment period.

**SUMMARY:** On July 16, 2008, EPA issued a notice in the **Federal Register** announcing the availability of the Reregistration Eligibility Decisions (REDs) for the soil fumigant pesticides chloropicrin, dazomet, metam sodium/potassium, and methyl bromide. The notice also announced a 60–day public comment period. This document is extending the comment period for 45 days, from September 15, 2008, to October 30, 2008.

**DATES:** Comments, identified by the docket identification (ID) number must be received on or before October 30, 2008.

**ADDRESSES:** Follow the detailed instructions as provided under **ADDRESSES** in the **Federal Register** notice of July 16, 2008.

**FOR FURTHER INFORMATION CONTACT:** *For pesticide-specific information contact*: The Chemical Review Manager listed in the **Federal Register** notice of July 16, 2008.

*For general information contact*: John Leahy, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6703; fax number: (703) 308–8090; e-mail address: *leahy.john@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. What Action is EPA Taking?

This document extends the public comment period for the fumigants chloropicrin, dazomet, metam potassium/sodium, and methyl bromide established in the **Federal Register** issued on July 16, 2008 (73 FR 40871, FRL–8372–3). In that document, EPA announced the availability of the REDs and opened a 60–day public comment period. EPA is hereby extending the comment period, which was set to end on September 15, 2008, to October 30, 2008.

To submit comments, or access the public docket, please follow the detailed instructions as provided under **ADDRESSES** in the July 16, 2008, **Federal Register** notice (73 FR 40871).

### II. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, directs that, after submission of all data concerning a pesticide active ingredient, the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration. Further provisions are made to allow a public comment period. However, the Administrator may extend the comment period if additional time for comment is requested. In this case, the Methyl Bromide Industry Panel (MBIP), California Specialty Crops Council, the Chloropicrin Manufacturers' Task Force (CMTF), the National Association of Manufacturers (NAM), the American Nursery and Landscape Association (ANLA), the California Strawberry Nurserymen's Association, the Agricultural Retailers Association, the American Forest and Paper Association, and McDermott, Will, and Emery LLP, on behalf of the Minor Crop Farmer Alliance (MCFA), have requested additional time to develop comments. These groups represent manufacturers and users of the soil fumigants. The Agency believes that an additional 45 days is warranted.

### List of Subjects

Environmental protection, Fumigants, Pesticides and pests.

Dated: August 25, 2008.

**Steven Bradbury,**

*Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. E8–20141 Filed 8–28–08; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OAR–2007–1145; FRL–8709–3]**

## Draft Risk and Exposure Assessment Report for Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Oxides of Sulfur

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

**ACTION:** Notice of draft report for public review and comment.

**SUMMARY:** On or about August 27, 2008, the Office of Air Quality Planning and Standards (OAQPS) of EPA is making available for public review and comment a draft document titled ''Risk and Exposure Assessment to Support the Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Oxides of Sulfur: First Draft.'' The purpose of this draft document is to convey the approach EPA has taken to assess environmental exposures to ambient oxides of nitrogen and sulfur and to characterize associated public welfare risks, as well as to present the results of those assessments. We anticipate the release of an additional chapter(s) on or about the week of September 15, 2008.

**DATES:** Comments on the above report must be received on or before October 15, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2007–1145, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* Comments may be sent by electronic mail (e-mail) to *a-and-r-docket@epa.gov*, Attention Docket ID No. EPA–HQ–OAR–2007–1145.
- *Fax:* Fax your comments to 202–566–9744, Attention Docket ID. No. EPA–HQ–OAR–2007–1145.
- *Mail:* Send your comments to: Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2007–1145.
- *Hand Delivery or Courier:* Deliver your comments to: EPA Docket Center, 1301 Constitution Ave., NW., Room 3334, Washington, DC. 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–OAR–2007–1145. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly

to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

*Docket:* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The Docket telephone number is 202–566–1742; fax 202–566–9744.

**FOR FURTHER INFORMATION CONTACT:** Dr. Anne Rea, Office of Air Quality Planning and Standards (Mailcode C539–02), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; e-mail: *rea.anne@epa.gov*; *telephone:* 919–541–0053; fax: 919–541–0840.

## General Information

### *A. What Should I Consider as I Prepare My Comments for EPA?*

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

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

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

**SUPPLEMENTARY INFORMATION:** Under section 108(a) of the Clean Air Act (CAA), the Administrator identifies and lists certain pollutants which ''cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare.'' The EPA then issues air quality criteria for listed pollutants, which are commonly referred to as ''criteria pollutants.'' The air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air, in varying quantities.'' Under section 109 of the CAA, EPA establishes NAAQS for each listed pollutant, with the NAAQS based on the air quality criteria. Section 109(d) of the CAA requires periodic review and, if appropriate, revision of existing air quality criteria. The revised air quality criteria reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. The EPA is also required to periodically review and revise the NAAQS, if appropriate, based on the revised criteria.

EPA is currently conducting a joint review of the existing secondary (welfare-based) national ambient air quality standards (NAAQS) for nitrogen dioxide ($NO_2$) and sulfur dioxide ($SO_2$). Because $NO_X$, $SO_X$, and their associated transformation products are linked from an atmospheric chemistry perspective as well as from an environmental effects perspective, and because of the National Research Council's (NRC's) 2004 recommendations to consider multiple pollutants in forming the scientific basis for the NAAQS, EPA has decided to jointly assess the science, risks, and policies relevant to protecting the public welfare associated with oxides of nitrogen and oxides of sulfur. This is the first time since NAAQS were established in 1971 that a joint review of these two pollutants has been conducted. Since both the Clean Air Scientific Advisory Committee (CASAC) and EPA have recognized these interactions historically, and the science related to these interactions has continued to evolve and grow to the present day, there is a strong basis for considering them together.

As part of its review of the secondary NAAQS for $NO_X$ and $SO_X$, EPA is preparing an assessment of exposures and characterization of risks for adverse ecological effects associated with atmospheric $NO_X$ and $SO_X$ deposition. A draft plan describing the proposed approaches to assessing ecological exposures and effects is described in the draft document, *Draft Scope and Methods Plan for Risk/Exposure Assessment: Secondary NAAQS Review for Oxides of Nitrogen and Oxides of Sulfur*. This document was released for public review and comment in March, 2008 and was the subject of a consultation with the CASAC on April 2 and 3, 2008. Comments received from that consultation have been considered in developing the first draft risk and exposure assessment for the secondary $NO_X/SO_X$ NAAQS review being released at this time.

The first draft risk and exposure assessment for the secondary $NO_X/SO_X$ NAAQS review released at this time conveys our approach to assess ecological effects due to the deposition of ambient $NO_X$ and $SO_X$, and present the results of these analyses. This draft document will be available online at: *http://www.epa.gov/ttn/naaqs/standards/no2so2sec/cr_rea.html.*

The EPA is soliciting advice and recommendations from the CASAC by means of a review on the draft document at an upcoming public meeting of the CASAC scheduled for October 1–2, 2008 in Research Triangle Park, N.C. Following the CASAC

meeting, EPA will consider comments received from the CASAC and the public in preparing a second draft risk and exposure assessment report. The release of the second draft report will be followed by another CASAC meeting which will be announced in a future **Federal Register** notice and ultimately EPA will release a final risk and exposure assessment document taking into consideration comments from the CASAC and public.

Dated: August 21, 2008.

**Jennifer N. Edmonds,**

*Acting Director, Office of Air Quality Planning and Standards.*

[FR Doc. E8–20136 Filed 8–28–08; 8:45 am]

BILLING CODE 6560–50–P

## OFFICE OF SCIENCE AND TECHNOLOGY POLICY

### Meeting of the President's Council of Advisors on Science and Technology

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the schedule and summary agenda for a meeting of the President's Council of Advisors on Science and Technology (PCAST), and describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act (FACA).

*Dates and Place:* September 16, 2008, Washington, DC. The meeting will be held in Room 100 at the Keck Center of the National Academies at 500 5th St., NW., Washington DC.

*Type of Meeting:* Open. Further details on the meeting agenda will be posted on the PCAST Web site at: *http://ostp.gov/cs/pcast/meetings_agendas*.

*Proposed Schedule and Agenda:* The President's Council of Advisors on Science and Technology (PCAST) is scheduled to meet in open session on Tuesday September 16, 2008, at approximately 9 a.m. The chairs of the PCAST subcommittee on university-private sector research partnerships are tentatively scheduled to lead a discussion on the findings of the PCAST study on this issue. The PCAST also is tentatively scheduled to convene three panels. The first panel will address broad policy issues associated with science and engineering education. The second panel will explore the impact of science policy on innovation. Additionally, PCAST is tentatively scheduled to have a panel providing an update on energy-related technologies. This session will end at approximately 4 p.m. Additional information and the final agenda will be posted at the PCAST Web site at: *http://ostp.gov/cs/pcast/meetings_agendas*.

*Public Comments:* There will be time allocated for the public to speak on the above agenda items. This public comment time is designed for substantive commentary on PCAST?s work topics, not for business marketing purposes. Please submit a request for the opportunity to make a public comment five (5) days in advance of the meeting. The time for public comments will be limited to no more than 5 minutes per person. Written comments are also welcome at any time following the meeting. Please notify Dr. Scott Steele, PCAST Executive Director, at (202) 456–6549, or fax your request/comments to (202) 456–6040.

**FOR FURTHER INFORMATION:** Information regarding agenda, time, and location is available at the PCAST Web site at: *http://ostp.gov/cs/pcast/meetings_agendas*. Questions about the meeting should be directed to PCAST Executive Director Dr. Scott Steele at (202) 456–6549 prior to 3 p.m. on Friday, September 5, 2008. Please note that public seating for this meeting is limited and is available on a first-come, first-served basis.

**SUPPLEMENTARY INFORMATION:** The President's Council of Advisors on Science and Technology was established by Executive Order 13226, on September 30, 2001. The purpose of PCAST is to advise the President on matters of science and technology policy, and to assist the President's National Science and Technology Council in securing private sector participation in its activities. The Council members are distinguished individuals appointed by the President from non-Federal sectors. The PCAST is co-chaired by Dr. John H. Marburger, III, the Director of the Office of Science and Technology Policy, and by E. Floyd Kvamme, a Partner at Kleiner Perkins Caufield & Byers.

**Stanley S. Sokul,**

*Chief of Staff and General Counsel, Office of Science and Technology Policy.*

[FR Doc. E8–20027 Filed 8–28–08; 8:45 am]

BILLING CODE 3170–W8–P

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection Requirement Submitted to OMB for Review and Approval, Comments Requested

August 22, 2008.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before *September 29, 2008*. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via Internet at *Nicholas_A._Fraser@omb.eop.gov* or via fax at (202) 395–5167 and to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC or via Internet at *Cathy.Williams@fcc.gov* or *PRA@fcc.gov*.

To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4)

select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB control number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.''

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection(s), contact Cathy Williams at (202) 418–2918, or via Internet at *Cathy.Williams@fcc.gov*.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0095.

*Title:* Multi-Channel Video Programming Distributors Annual Employment Report.

*Form Number:* FCC Form 395–A.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit entities; not-for-profit institutions.

*Number of Respondents/Responses:* 2,500.

*Estimated Time per Response:* 1 hour.

*Frequency of Response:* Recordkeeping requirement; Annual reporting requirement.

*Total Annual Burden:* 2,500 hours.

*Total Annual Cost:* None.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 154(i) and 634 of the Communications Act of 1934, as amended.

*Confidentiality:* Whether the Form is confidential will be determined in a pending Commission rulemaking.

*Privacy Impact Assessment:* No impact(s).

*Needs and Uses:* FCC Form 395–A, ''The Multi-Channel Video Programming Distributor Annual Employment Report,'' is a data collection device used by the Commission to assess industry employment trends and provide reports to Congress. By the Report, multichannel video programming distributors (''MVPDs'') identify employees by gender and race/ethnicity in sixteen specified job categories. FCC Form 395–A contains a grid which collects data on full and part-time employees and requests a list of employees by job title, indicating the job category and full or part-time status of the position. MVPDs, including cable operators, with six or more full-time employees (but Satellite Master Antenna Television (''SMATV'') operators only if they also serve 50 or more subscribers) must complete Form 395–A in its entirety and file it by September 30 each year. MVPDs with five or fewer full-time employees are not required to file but, if, they do, they need to complete and file only Sections I, II and VIII of the FCC Form 395–A, but not the portions requiring workforce information, and thereafter need not file again unless their employment increases to more than five full-time employees.

In *Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies*, MM Docket No. 98–204, Third Report and Order and Fourth Notice of Proposed Rulemaking, 69 FR 34950, June 23, 2004, 19 FCC Rcd 9773 (2004) (''2004 Order''), the Commission considered issues relating to the Annual Employment Report forms, including Form 395–A. In the 3rd R&O, the Commission adopted revised rules requiring broadcasters and multichannel video programming distributors (MVPDs) to file annual employment reports, which cable and other MVPDs will use to file annual employment reports. The intent of the 3rd R&O was to update rules for MVPDs to file Form 395–A consistent with new rules adopted in the 2nd R&O. The intent of the Fourth Notice of Proposed Rulemaking, which remains pending, is to provide time for cable and other MVPDs and the public to address the issue of whether the Commission should keep these forms confidential after they are filed. Upon the effective date of the rulemaking deciding the confidentiality issue, MVPDs and broadcasters must start keeping records of their employees so they can prepare their annual employment reports due to be filed on the next due date thereafter.

In its 2004 Order, the Commission stated that Form 395–A conformed to the racial and employment categories contained in the then-existing Form EEO–1 Employer Information Report issued by Equal Employment Opportunity Commission (the ''EEOC''), 2004 Order, at 9977–78. The Order noted that the EEOC had proposed to revise its EEO–1 form to incorporate new racial and employment categories approved by OMB. It also noted that, when the revised EEO–1 form was released, the Commission would review its Form 395–A to see what changes were needed to comply with the new OMB standards, and whether it could conform Form 395–A to those standards consistent with Section 634 of the Communications Act of 1934, as amended (the ''Act''). 47 U.S.C. 554; *see* 2004 Order at 9978.

With the EEOC's release of the EEO–1 incorporating revised racial and employment categories, the Bureau sought public comment (''Media Bureau Seeks Comment on Possible Changes to FCC Forms 395–A and 395–B,'' Public Notice DA 08–752, released April 11, 2008; 73 FR 21346, April 21, 2008) (the ''Public Notice'') on whether to incorporate the EEOC's revised categories and whether such changes would be consistent with Section 634 of the Act. The public comment period ended on June 6, 2008, and the Commission has completed its review of all the comments and reply comments. The Commission did not receive any comments opposing the incorporation of the EEOC's revised categories in the FCC's annual employment reports.

The Commission has concluded that the proposed changes to FCC Form 395–A are consistent with the racial and job category data required by Section 634 of the Act because the revisions simply reflect different terminology for the same categories and more detailed sub-categories. 47 U.S.C. 554.

*OMB Control Number:* 3060–0390.

*Title:* Broadcast Station Annual Employment Report.

*Form Number:* FCC Form 395–B.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit entities; Not-for-profit institutions.

*Number of Respondents/Responses:* 14,000.

*Estimated Time per Response:* 1 hour.

*Frequency of Response:* Annual reporting requirement.

*Total Annual Burden:* 14,000 hours.

*Total Annual Cost:* None.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 154(i) and 334 of the Communications Act of 1934, as amended.

*Confidentiality:* Whether the Form is confidential will be determined in a pending Commission rulemaking.

*Privacy Impact Assessment:* No impact(s).

*Needs and Uses:* FCC Form 395–B, ''The Broadcast Station Annual Employment Report,'' is a data collection device used by the Commission to assess industry employment trends and provide reports to Congress. By the Report, broadcast licensees and permittees identify employees by gender and race/ethnicity in ten specified job categories. FCC Form 395–B contains two grids, which collect information of full and part-time employees, respectively, and requests lists of employees by job title, indicating the job category of the position. The Report, which is a data collection device used to compile statistics on the

broadcast workforce, identifies each staff member by gender and race/ethnicity. Broadcast licensees or permittees with five or more full-time employees are required to file Form 395–B on or before September 30th of each year. Although licensees or permittees with fewer than five full-time employees are not required to file, if they do, they need to complete and file only Sections I, II and IV of the FCC Form 395–B, but not the portions requiring workforce information, and thereafter need not file again unless their employment increases to five or more full-time employees.

In *Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies*, MM Docket No. 98–204, Third Report and Order and Fourth Notice of Proposed Rulemaking, 69 FR 34950, June 23, 2004, 19 FCC Rcd 9773 (2004) (''2004 Order''), the Commission considered issues relating to the Annual Employment Report forms, including Form 395–B. In the 3rd R&O, the Commission adopted revised rules requiring broadcasters and multichannel video programming distributors (MVPDs) to file annual employment reports. Radio and television broadcasters will use Form 395–B to file annual employment reports. The intent of the 3rd R&O is to reinstate and update requirements for broadcasters and MVPDs to file annual employment reports. The intent of the Fourth Notice of Proposed Rulemaking, which remains pending, was to provide time for MVPDs, broadcast licensees, and the public to address the issue of whether the Commission should keep these forms confidential after they are filed. With the effective date of the rulemaking deciding the confidentiality issue, MVPDs and broadcasters must start keeping records of their employees so they can prepare their annual employment reports due to be filed on the first due date thereafter.

In its 2004 Order, the Commission stated that Form 395–B conformed to the racial and employment categories contained in the then-existing Form EEO–1 Employer Information Report issued by the Equal Employment Opportunity Commission (''EEOC''). 2004 Order, at 9977–78.

The Order noted that the EEOC had proposed to revise its EEO–1 form to incorporate new racial and employment categories approved by OMB. It also noted that, when the revised EEO–1 form was released, the Commission would review its Form 395–B to determine what changes were needed to comply with the new OMB standards, and whether it could conform Form 395–B to those standards consistent with Section 334 of the Communications Act of 1934, as amended (the ''Act''). 47 U.S.C. 334; *see* 2004 Order at 9978.

With the EEOC's release of the EEO–1 incorporating revised racial and employment categories, the FCC's Media Bureau sought public comment (''Media Bureau Seeks Comment on Possible Changes to FCC Forms 395–A and 395–B,'' Public Notice DA 08–752, released April 11, 2008; 73 FR 21346, April 21, 2008) (''Public Notice'') on whether to incorporate the EEOC's revised categories and whether such changes would be consistent with Section 334 of the Act. The public comment period ended on June 6, 2008, and the Commission has completed its review of all the comments and reply comments. The Commission did not receive any comments opposing the incorporation of the EEOC's revised categories in the FCC's annual employment reports.

The Commission has concluded that the proposed changes to FCC Form 395–B are consistent with Section 334 of the Act, which allows the FCC to make non-substantive technical or clerical revisions to annual employment reports in order to reflect changes in, *inter alia*, terminology. Because these changes do not subtract any information requested on the form, but rather seek more detail on race identification and official/manager occupations, with minor changes in terminology, we concluded that they are consistent with Section 334. 47 U.S.C. 334.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E8–20143 Filed 8–28–08; 8:45 am]

**BILLING CODE 6712–01–P**

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## FEDERAL COMMUNICATIONS COMMISSION

**[DA 08–1862]**

### Notice of Debarment; Schools and Libraries Universal Service Support Mechanism

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** The Federal Communications Commission (the ''Commission'') debars Mr. Allan Green from the schools and libraries universal service support mechanism (or ''E-Rate Program'') for a period of three years based on his conviction of conspiracy to commit mail fraud in connection with his participation in the program. The Bureau takes this action to protect the E-Rate Program from waste, fraud and abuse.

**DATES:** Debarment commences on the date Mr. Allan Green receives the debarment letter or August 29, 2008, whichever date come first, for a period of three years.

**FOR FURTHER INFORMATION CONTACT:** Rebekah Bina, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street, SW., Washington, DC 20554. Rebekah Bina may be contacted by phone at (202) 418–7931 or e-mail at *Rebekah.Bina@fcc.gov.* If Ms. Bina is unavailable, you may contact Ms. Vickie Robinson, Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418–1420 and by e-mail at *vickie.robinson@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** The Commission debarred Mr. Allan Green from the schools and libraries universal service support mechanism for a period of three years pursuant to 47 CFR 54.8 and 47 CFR 0.111. Attached is the debarment letter, DA 08–1862, which had the suspension letter, DA 08–1179 attached, and was mailed to Mr. Allan Green and released on August 7, 2008. The complete text of the notice of debarment is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portal II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. In addition, the complete text is available on the FCC's Web site at *http://www.fcc.gov.* The text may also be purchased from the Commission's duplicating inspection and copying during regular business hours at the contractor, Best Copy and Printing, Inc., Portal II, 445 12th Street, SW., Room CY–B420, Washington, DC 20554, telephone (202) 488–5300 or (800) 378–3160, facsimile (202) 488–5563, or via e-mail *http://www.bcpiweb.com.*

Federal Communications Commission.

**Vickie Robinson,**

*Assistant Chief, Investigations and Hearings Division, Enforcement Bureau.*

The debarment letter, which attached the suspension letter, follows:

August 7, 2008.

DA 08–1862.

Via Certified Mail; Return Receipt Requested and E-Mail.

Mr. Allan Green, c/o Mark Rosenbush, Esq., Attorney at Law, 214 Duboce Avenue, San Francisco, CA 94103.

Re: Notice of Debarment, File No. EB–08–IH–1141.

Dear Mr. Green: Pursuant to section 54.8 of the rules of the Federal Communications Commission (the ''Commission''), by this Notice of Debarment you are debarred from the schools and libraries universal service support mechanism (or ''E-Rate program'') for a period of three years.[1]

On May 19, 2008, the Enforcement Bureau (the ''Bureau'') sent you a Notice of Suspension and Initiation of Debarment Proceedings (the ''Notice of Suspension'').[2] That Notice of Suspension was published in the **Federal Register** on June 9, 2008.[3] The Notice of Suspension suspended you from the schools and libraries universal service support mechanism and described the basis for initiation of debarment proceedings against you, the applicable debarment procedures, and the effect of debarment.[4]

Pursuant to the Commission's rules, any opposition to your suspension or its scope or to your proposed debarment or its scope had to be filed with the Commission no later than thirty (30) calendar days from the earlier date of your receipt of the Notice of Suspension or publication of the Notice of Suspension in the **Federal Register**.[5] The Commission did not receive any such opposition.

As discussed in the Notice of Suspension, you pled guilty to and were convicted of conspiracy to commit mail fraud, in violation of 18 U.S.C. 71, in connection with your participation in the Philadelphia Academy (''Academy'') E-Rate project (''Project'').[6] You admitted to participating in a conspiracy whereby you and others (collectively ''co-conspirators''), among other things, misrepresented to Academy employees that co-conspirators would be able to obtain a grant to cover the Academy's share of the cost of the Project, provided false and misleading documents to the Universal Service Administrative Company (''USAC'') indicating the Academy has secured access to funding from an independent source, and misrepresented to USAC the share of the Project's costs that USAC would be paying.[7] Such conduct constitutes the basis for your debarment, and your conviction falls within the categories of causes for debarment under section 54.8(c) of the Commission's rules.[8] For the foregoing reasons, you are hereby debarred for a period of three years from the debarment date, i.e., the earlier date of your receipt of this Notice of Debarment or its publication date in the **Federal Register**.[9] Debarment excludes you, for the debarment period, from activities ''associated with or related to the schools and libraries support mechanism,'' including ''the receipt of funds or discounted services through the schools and libraries support mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.''[10]

Sincerely,

Hillary S. DeNigro,
*Chief, Investigations and Hearings Division, Enforcement Bureau.*

cc: Kristy Carroll, Esq., Universal Service Administrative Company (via e-mail). Michael Wood, Antitrust Division, United States Department of Justice (via mail).

May 19, 2008.

DA 08–1179.

Via Certified Mail Return Receipt Requested and E-Mail.

Mr. Allan Green, c/o Mark Rosenbush, Esq., Attorney at Law, 214 Duboce Avenue, San Francisco, CA 94103.

Re: Notice of Suspension and Initiation of Debarment Proceedings, File No. EB–08–IH–1141.

Dear Mr. Green: The Federal Communications Commission (''FCC'' or ''Commission'') has received notice of your conviction of conspiracy to commit mail fraud, in violation of 18 U.S.C. 371, in connection with your participation in the schools and libraries universal service support mechanism (''E-Rate program'').[1] Consequently, pursuant to 47 CFR 54.8, this letter constitutes official notice of your suspension from the E-Rate program. In addition, the Enforcement Bureau (''Bureau'') hereby notifies you that we are commencing debarment proceedings against you.[2]

## I. Notice of Suspension

The Commission has established procedures to prevent persons who have ''defrauded the government or engaged in similar acts through activities associated with or related to the schools and libraries support mechanism'' from receiving the benefits associated with that program.[3] You pled guilty to conspiracy to commit mail fraud through your activities as a principal of ADJ Consultants, Inc. (''ADJ'') in relation to the Philadelphia Academy (''the Academy'') E-Rate project (the ''Project'').[4] Specifically, you admitted that you and others (collectively ''co-conspirators'') met with Academy employees, obtained their agreement to utilize ADJ services for the Project, and told Academy employees that co-conspirators would be able to obtain a grant to cover the Academy's share of

[1] *See* 47 CFR 0.111(a), 54.8.

[2] Letter from Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Mr. Allan Green, Notice of Suspension and Initiation of Debarment Proceedings, 23 FCC Rcd 8211 (Inv. & Hearings Div., Enf. Bur. 2008) (Attachment 1).

[3] 73 FR 32579 (June 9, 2008).

[4] *See* Notice of Suspension, 23 FCC Rcd at 8212–14.

[5] *See* 47 CFR 54.8(e)(3) and (4). That date occurred no later than July 9, 2008. *See supra* note 3.

[6] *See* Notice of Suspension, 23 FCC Rcd at 8211–12.

[7] *See id.* at 8212.

[8] 47 CFR 54.8(c).

[9] *See* 47 CFR 54.8(g). *See also* Notice of Suspension, 23 FCC Rcd at 8213.

[10] *See* 47 CFR 54.8(a)(1), 54.8(a)(5), 54.8(d); Notice of Suspension, 23 FCC Rcd at 8214.

[1] Any further reference in this letter to ''your conviction'' refers to your guilty plea and subsequent conviction of conspiracy to commit mail fraud. *See United States* v. *Allan Green,* Criminal Docket No. 3:05–CR–00208–CRB–009, Judgment (N.D.Cal. filed and entered Apr. 10, 2008) (''*Allan Green Judgment*''), Substitute Information (N.D.Cal. filed Apr. 9, 2007 and entered Apr. 10, 2007) (''*Allan Green Substitute Information*''). *See United States* v. *Video Network Communications, Inc. et al.,* Criminal Docket No. 3:05–CR–00208–CRB, Superseding Indictment (N.D.Cal. filed Dec. 8, 2005 and entered Dec. 12, 2005); *http://www.usdoj.gov/atr/cases/f213600/213626.htm* (accessed May 1, 2008) (''*VNCI Superseding Indictment*'').

[2] 47 CFR 54.8; 47 CFR 0.111 (delegating to the Enforcement Bureau authority to resolve universal service suspension and debarment proceedings). The Commission adopted debarment rules for the schools and libraries universal service support mechanism in 2003. *See Schools and Libraries Universal Service Support Mechanism,* Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202 (2003) (''*Second Report and Order*'') (adopting section 54.521 to suspend and debar parties from the E-rate program). In 2007, the Commission extended the debarment rules to apply to all of the Federal universal service support mechanisms. *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight; Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Lifeline and Link Up; Changes to the Board of Directors for the National Exchange Carrier Association, Inc.,* Report and Order, 22 FCC Rcd 16372, 16410–12 (2007) (*Program Management Order*) (renumbering section 54.521 of the universal service debarment rules as section 54.8 and amending subsections (a)(1), (5), (c), (d), (e)(2)(i), (3), (e)(4), and (g)).

[3] *See Second Report and Order,* 18 FCC Rcd at 9225, para. 66; *Program Management Order,* 22 FCC Rcd at 16387, para. 32. The Commission's debarment rules define a ''person'' as ''[a]ny individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however, organized.'' 47 CFR 54.8(a)(6).

[4] *See Allan Green Substitute Information* at paras. 2, 6. The following four individuals, who were also charged in the *VNCI Superseding Indictment,* have pled guilty or been found guilty, and subsequently have been sentenced: Judy Green, George Marchelos, Earl Nelson, and William Holman. We are sending separate notices of suspension and initiation of debarment proceedings to these individuals. VNCI and ADJ are now defunct; charges against the companies have been dropped.

the Project's costs.[5] You admitted that the co-conspirators further agreed and submitted to the Universal Service Administrative Company ''(USAC'') false and misleading documents indicating that the Academy had secured access to funding from an independent foundation and that the co-conspirators also misrepresented the share of the Project's costs that USAC would be paying.[6]

Pursuant to section 54.8(a)(4) of the Commission's rules,[7] your conviction requires the Bureau to suspend you from participating in any activities associated with or related to the schools and libraries fund mechanism, including the receipt of funds or discounted services through the schools and libraries fund mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.[8] Your suspension becomes effective upon the earlier of your receipt of this letter or publication of notice in the **Federal Register**.[9]

Suspension is immediate pending the Bureau's final debarment determination. In accordance with the Commission's debarment rules, you may contest this suspension or the scope of this suspension by filing arguments in opposition to the suspension, with any relevant documentation. Your request must be received within 30 days after you receive this letter or after notice is published in the **Federal Register**, whichever comes first.[10] Such requests, however, will not ordinarily be granted.[11] The Bureau may reverse or limit the scope of suspension only upon a finding of extraordinary circumstances.[12] Absent extraordinary circumstances, the Bureau will decide any request for reversal or modification of suspension within 90 days of its receipt of such request.[13]

## II. Initiation of Debarment Proceedings

Your guilty plea and conviction of criminal conduct in connection with the E-Rate program, in addition to serving as a basis for immediate suspension from the program, also serves as a basis for the initiation of debarment proceedings against you. Your conviction falls within the categories of causes for debarment defined in section 54.8(c) of the Commission's rules.[14] Therefore, pursuant to section 54.8(a)(4) of the Commission's rules, your conviction requires the Bureau to commence debarment proceedings against you.

As with your suspension, you may contest debarment or the scope of the proposed debarment by filing arguments and any relevant documentation within 30 calendar days of the earlier of the receipt of this letter or of publication in the **Federal Register**.[15] Absent extraordinary circumstances, the Bureau will debar you.[16] Within 90 days of receipt of any opposition to your suspension and proposed debarment, the Bureau, in the absence of extraordinary circumstances, will provide you with notice of its decision to debar.[17] If the Bureau decides to debar you, its decision will become effective upon the earlier of your receipt of a debarment notice or publication of the decision in the **Federal Register**.[18]

If and when your debarment becomes effective, you will be prohibited from participating in activities associated with or related to the schools and libraries support mechanism for three years from the date of debarment.[19] The Bureau may, if necessary to protect the public interest, extend the debarment period.[20]

Please direct any response, if by messenger or hand delivery, to Marlene H. Dortch, Secretary, Federal Communications Commission, 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002, to the attention of Diana Lee, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, with a copy to Vickie Robinson, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, Federal Communications Commission. If sent by commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail), the response should be sent to the Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, Maryland 20743. If sent by first-class, Express, or Priority mail, the response should be sent to Diana Lee, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–C330, Washington, DC 20554, with a copy to Vickie Robinson, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–C330, Washington, DC 20554. You shall also transmit a copy of the response via e-mail to *diana.lee@fcc.gov* and to *vickie.robinson@fcc.gov*.

If you have any questions, please contact Ms. Lee via mail, by telephone at (202) 418–1420 or by e-mail at *diana.lee@fcc.gov*. If Ms. Lee is unavailable, you may contact Ms. Vickie Robinson, Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418–1420 and by e-mail at *vickie.robinson@fcc.gov*.

Sincerely yours,

Hillary S. DeNigro,

*Chief, Investigations and Hearings Division, Enforcement Bureau.*

cc: Kristy Carroll, Esq., Universal Service Administrative Company (via e-mail). Michael Wood, Antitrust Division, United States Department of Justice (via mail).

[FR Doc. E8–20145 Filed 8–28–08; 8:45 am]

BILLING CODE 6712–01–P

[5] *See Allan Green Substitute Information* at para. 5.

[6] *See id.*

[7] 47 CFR 54.8(a)(4). *See Second Report and Order,* 18 FCC Rcd at 9225–9227, paras. 67–74.

[8] 47 CFR 54.8(a)(1), (d).

[9] *Second Report and Order,* 18 FCC Rcd at 9226, para. 69; 47 CFR 54.8(e)(1).

[10] 47 CFR 54.8(e)(4).

[11] *Id.*

[12] 47 CFR 54.8(e)(5).

[13] *See Second Report and Order,* 18 FCC Rcd at 9226, para. 70; 47 CFR 54.8(e)(5), 54.8(f).

[14] ''Causes for suspension and debarment are the conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism, the high-cost support mechanism, the rural healthcare support mechanism, and the low-income support mechanism.'' 47 CFR 54.8(c). Such activities ''include the receipt of funds or discounted services through [the Federal universal service] support mechanisms, or consulting with, assisting, or advising applicants or service providers regarding [the Federal universal service] support mechanisms.'' 47 CFR 54.8(a)(1).

[15] *See Second Report and Order,* 18 FCC Rcd at 9226, para. 70; 47 CFR 54.8(e)(3).

[16] *Second Report and Order,* 18 FCC Rcd at 9227, para. 74.

[17] *See id.,* 18 FCC Rcd at 9226, para. 70; 47 CFR 54.8(e)(5).

[18] *Id.* The Commission may reverse a debarment, or may limit the scope or period of debarment upon a finding of extraordinary circumstances, following the filing of a petition by you or an interested party or upon motion by the Commission. 47 CFR 54.8(f).

[19] *Second Report and Order,* 18 FCC Rcd at 9225, paras. 67; 47 CFR 54.8(d), 54.8(g).

[20] *Id.*

## FEDERAL COMMUNICATIONS COMMISSION

**[Report No. 2872]**

### Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding

August 20, 2008.

Petitions for Reconsideration have been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of

these documents is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1)–800–378–3160). Oppositions to these petitions must be filed by September 15, 2008. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to oppositions must be filed within 10 days after the time for filing oppositions have expired.

*Subject:* In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities (CG Docket No. 03–123).

E911 Requirements for IP-Enabled Service Providers (WC Docket No. 05–196).

*Number of Petitions Filed:* 2.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E8–20126 Filed 8–28–08; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[DA 08–1913; WT Docket No. 08–165]**

## Wireless Telecommunications Bureau Seeks Comment on Petition for Declaratory Ruling by CTIA—The Wireless Association To Clarify Provisions of Section 332(c)(7)(B) To Ensure Timely Siting Review and To Preempt Under Section 253 State and Local Ordinances That Classify All Wireless Siting Proposals as Requiring a Variance

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** In this document, comment is sought on a July 11, 2008 petition for Declaratory Ruling (Petition) filed by CTIA—The Wireless Association (Petitioner). The Petitioner asks the Federal Communications Commission to clarify the provisions of section 332(c)(7)(B)(v) of the Communications Act, as amended, that Petitioner contends are ambiguous and that have been unreasonably interpreted. Petitioner further requests that the Commission preempt local ordinances and state laws that Petitioner believes violate section 253(a) of the Communications Act, as amended.

**DATES:** Interested parties may file comments on or before September 15, 2008, and reply comments on or before September 30, 2008.

**ADDRESSES:** You may submit comments, identified by WT Docket No. 08–165, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) *by e-mail: FCC504@fcc.gov or phone:* 202–418–0530 *or TTY:* 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Michael Rowan, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau at (202) 418–1883 or *Michael.Rowan@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's public notice released on August 14, 2008. The full text of the public notice is available for public inspection and copying during business hours in 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, facsimile (202) 488–5563, or e-mail *FCC@BCPIWEB.com.* Copies of the public notice also may be obtained via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number, WT Docket No. 08–165. Additionally, the complete item is available on the Federal Communications Commission's Web site at *http://www.fcc.gov.*

On July 11, 2008, CTIA—The Wireless Association (CTIA) filed a petition requesting that the Federal Communications Commission (Commission) issue a Declaratory Ruling clarifying provisions of the Communications Act of 1934, as amended (Communications Act) regarding state and local review of wireless facility siting applications.[1] CTIA seeks clarification of provisions in section 332(c)(7) of the Communications Act that it contends are ambiguous and that it claims have been interpreted in a manner that has allowed certain zoning authorities to impose unreasonable impediments to wireless facility siting and the provision of wireless services. CTIA also requests that the Commission preempt local ordinances and state laws that it states subject wireless facility siting applications to unique, burdensome requirements, in violation of section 253(a) of the Communications Act, which bars state and local laws that ''prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.'' [2]

Specifically, in its petition, CTIA asks the Commission to take four actions relating to the time frames in which zoning authorities must act on siting requests, their power to restrict competitive entry by multiple providers in a given area, and their ability to impose certain procedural requirements on wireless service providers. First, to eliminate an ambiguity that CTIA contends currently exists in section 332(c)(7)(B)(v) of the Communications Act, CTIA asks the Commission to clarify the time period in which a state or local zoning authority will be deemed to have failed to act on a wireless facility siting application. CTIA states that ''the Commission should issue a declaratory ruling explaining that (1) a failure to act on a wireless facility siting application only involving collocation occurs if there is no final action within 45 days from submission of the request to the local zoning authority; and (2) a failure to act on any other wireless siting facility application occurs if there is no final action within 75 days from submission of the request to the local zoning authority.'' [3] Second, citing the requirement in section 332(c)(7)(B)(ii) of the Communications Act that state and local governments act on wireless facility siting applications within a reasonable time, CTIA asks the Commission to implement procedural steps whereby, if a zoning authority fails

[1] In the Matter of Petition for Declaratory Ruling to Clarify Provisions of section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt under section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance, *Petition for Declaratory Ruling*, WT Docket No. 08–165, filed July 11, 2008 (Petition).

[2] 47 U.S.C. 253(a).

[3] Petition at iii.

to act within the above time frames, the application shall be ''deemed granted.'' Alternatively, CTIA asks the Commission to establish a presumption that entitles an applicant to a court-ordered injunction granting the application unless the zoning authority can justify the delay. Third, CTIA asks the Commission to clarify that section 332(c)(7)(B)(i)(II), which forbids state and local decisions that ''prohibit or have the effect of prohibiting the provision of personal wireless services,''[4] bars zoning decisions that have the effect of preventing a specific provider from providing service to a location on the basis of another provider's presence there. Finally, CTIA requests that the Commission preempt, under section 253 of the Communications Act, local ordinances and state laws that automatically require a wireless service provider to obtain a variance before siting facilities.

**Procedural Matters**

This proceeding has been designated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules.[5] Parties making oral *ex parte* presentations in this proceeding are reminded that memoranda summarizing the presentation must contain the presentation's substance and not merely list the subjects discussed.[6] More than a one- or two-sentence description of the views and arguments presented is generally required.[7]

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (May 1, 1998).

• *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov*. Filers should follow the instructions provided on the Web site for submitting comments.

• For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.

• *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

*People with Disabilities:* 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), 202–418–0432 (tty).

Parties shall send one copy of their comments and reply comments to Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, e-mail *FCC@BCPIWEB.com.* Comments filed in response to this public notice will be available for public inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554, and via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number, WT Docket No. 08–165. The comments may also be purchased from Best Copy and Printing, Inc., telephone (800) 378–3160, facsimile (202) 488–5563, or e-mail *FCC@BCPIWEB.com.*

Federal Communications Commission.

**James D. Schlichting,**

*Acting Chief, Wireless Telecommunications Bureau.*

[FR Doc. E8–20010 Filed 8–28–08; 8:45 am]

BILLING CODE 6712–01–P

[4] 47 U.S.C. 332(c)(7)(B)(i)(II).

[5] *See* 47 CFR 1.1200(a), 1.1206.

[6] *See* Commission Emphasizes the Public's Responsibilities in Permit-But-Disclose Proceedings, *Public Notice*, 15 FCC Rcd 19945 (2000).

[7] *See* 47 CFR 1.1206(b)(2). Other rules pertaining to oral and written presentations are also set forth in 1.1206(b). *See* 47 CFR 1.1206(b).

## FEDERAL MARITIME COMMISSION

**[Docket No. 08–04]**

### Tienshan, Inc. v. Tianjin Hua Feng Transport Agency Co., Ltd.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission (''Commission'') by Tienshan, Inc. Complainant asserts that it is a corporation organized and existing pursuant to the laws of the State of Delaware with its principal place of business at 231 Wilson Avenue, South Norwalk, Connecticut 06854. Complainant alleges that Respondent, Tianjin Hua Feng Transport Agency Co., Ltd., is a foreign corporation organized and operating pursuant the laws of the People's Republic of China with its principal place of business at Rm. 1002, Bldg. A, International Commercial Trade Center, No. 59 Machang Road, Hexi District, Tianjin, China. Complainant also alleges that Respondent is operating as a bonded and tariffed foreign-based Non-Vessel-Operating Common Carrier under FMC No. 018117.

Complainant asserts that, in April 2008 it signed a sales contract for the purchase of stoneware from Henan Huatai Ceramic Technology Trading Co., Ltd. (''Henan Huatai'' or ''Shipper''), located in Henan, China, and that the terms of sale were FOB Tianjin Port, China. Complainant avers that it purchased the stoneware in order to perform its contracts with Wal-Mart Stores, Inc. (''Wal-Mart'') and other U.S. retailers. Complainant maintains that it paid the full contract price to Henan Huatai, and consequently, title to the goods was transferred to Complainant.

Complainant alleges that the goods were loaded on a Wan Hai Lines (Singapore) PTE Ltd. (''Wan Hai'') vessel, under a Wan Hai bill of lading naming Henan Huatai as Shipper, and Complainant as Consignee; and that the cargo arrived at the port of discharge, Long Beach, CA, mid-June 2008. Complainant further alleges that it paid the full amount of the ocean freight and other charges to Wan Hai. Complainant claims that Shipper, Henan Huatai, went out of business in June 2008, and Respondent, acting as a freight forwarder in China on behalf of the Shipper, is unlawfully holding the original bill of lading, alleging debts owed by Shipper to Respondent.

Complainant alleges that Respondent's refusal to provide the original bill of lading to Complainant, unless Complainant paid to Respondent the amount owed by the Shipper, constitutes an unreasonable regulation or practice related to the delivery of property in violation of 46 U.S.C. 41102(c) (formerly § 10(d)(1) of the Shipping Act of 1984). Complainant claims injury in the form of demurrage charges in the amount of $16,944.00; loss of its funds held in an escrow account required by Wan Hai in the amount of $47,801.42; and liquidated damages imposed by Wal-Mart for lost sales in the amount $106,115.00; for a total of $170,860.42, with liquidated damages continuing to accrue.

Complainant requests that the Commission issue as relief, an Order: (1) Compelling Respondent to answer the charges in the subject complaint, and scheduling a hearing in Washington, DC; (2) finding that Respondent's activities were unlawful and in violation of the Shipping Act; (3) compelling Respondent to pay reparations of $170,860.42 plus interest, costs, and attorney's fees; and (4) requiring Respondent to provide Complainant with the original bill of lading to allow Complainant to secure release of its escrow deposit from Wan Hai and stop other liquidated damages from accruing. Additionally, Complainant requests that the Commission issue further relief as it deems just and proper.

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by August 26, 2009, and the final decision of the Commission shall be issued by December 24, 2009.

**Karen V. Gregory,**

*Assistant Secretary.*

[FR Doc. E8–20115 Filed 8–28–08; 8:45 am]

**BILLING CODE 6730–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Common Formats for Patient Safety Data Collection and Event Reporting

**AGENCY:** Agency for Healthcare Research and Quality (AHRQ), DHHS.

**ACTION:** Notice of Availability—Common Formats for Safety Data Collection and Event Reporting.

**SUMMARY:** The Patient Safety and Quality Improvement Act of 2005 (Patient Safety Act) provides for the formation of Patient Safety Organizations (PSOs), which would collect and analyze confidential information reported by healthcare providers. The Patient Safety Act (at 42 U.S.C. 299b–23) authorizes the collection of this information in a standardized manner, as explained in the related Notice of Proposed Rulemaking published in the **Federal Register** on February 12, 2008: 73 FR 8112–8183. As requested by the Secretary of DHHS, AHRQ has coordinated the development of a set of common definitions and reporting formats (Common Formats) which would facilitate the voluntary collection of patient safety data and reporting of this information to PSOs. The purpose of this notice is to announce the initial release of the Common Formats, Version 0.1 Beta, and the process for development of future versions.

**DATES:** Ongoing public input.

**ADDRESSES:** The Common Formats can be accessed electronically at the following Web site of the Department of Health and Human Services: *http://www.pso.ahrq.gov/index.html*.

**FOR FURTHER INFORMATION CONTACT:** Susan Grinder, Center for Quality Improvement and Patient Safety, AHRQ, 540 Gaither Road, Rockville, MD 20850; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; E-mail: *psoc@ahrq.hhs.gov*.

**SUPPLEMENTARY INFORMATION:**

#### Background

The Patient Safety Act establishes a framework by which doctors, hospitals, and other health care providers may voluntarily report information on a privileged and confidential basis regarding patient safety events and quality of care. The Patient Safety Act provides for voluntary formation of PSOs, which can be public or private organizations, that collect, aggregate, and analyze information regarding the quality and safety of care delivered in any healthcare setting. Information that is assembled and developed by providers and PSOs—called ''patient safety work product''—is privileged and confidential; it can be used to identify patient safety events and unsafe conditions that increase risks to patients.

The Patient Safety Act requires PSOs, to the extent practical and appropriate, to collect patient safety work product from providers in a standardized manner in order to permit valid comparisons of similar cases among similar providers.

One of the goals of the legislation is to allow aggregation of sufficient data to identify and address underlying causal factors of patient safety problems. In order to facilitate standardized data collection, the Secretary of DHHS requested AHRQ to coordinate the development of Common Formats for patient safety events.

Definitions and other details about PSOs and patient safety work product have been prepared for publication at 42 CFR Part 3; a Notice of Proposed Rulemaking was published in the **Federal Register** on February 12, 2008, as noted above, and a final regulation implementing the Patient Safety Act is under review.

#### Definition of Common Formats

The term Common Formats is used to describe technical requirements developed for the uniform collection and reporting of patient safety data, including all supporting material:

- Descriptions of patient safety events and unsafe conditions to be reported,
- Delineation of data elements to be collected for specific types of events,

- Examples of patient safety population reports,
- A metadata registry with data element attributes and technical specifications,
- Paper forms to allow immediate implementation, and
- A users guide.

Common Formats delineate definitional and reporting specifications that will allow healthcare providers to collect and submit standardized information regarding patient safety events. The Common Formats are not intended to replace any current mandatory reporting system, collaborative/voluntary reporting system, research related reporting system, or other reporting/recording systems.

**Scope of Common Formats**

The scope of Common Formats will apply to all patient safety concerns including:

- Incidents—patient safety events that reached the patient, whether or not there was harm,
- Near misses or close calls—patient safety events that did not reach the patient, and
- Unsafe conditions.

In the interest of supporting PSO data collection from the outset, AHRQ is releasing Version 0.1 Beta of the Common Formats, which have a defined focus on patient safety reporting for hospital inpatients. It should be noted, however, that the Patient Safety Act confers both privilege and confidentiality on all patient safety work product developed under the aegis of a PSO with respect to healthcare in any setting. AHRQ anticipates expanding future versions of the Common Formats to include other settings such as: Nursing homes and other bedded facilities; ambulatory surgery centers; other ambulatory care settings, including community health centers, rehabilitation centers, and hemodialysis centers; physician and practitioner offices; and retail establishments such as pharmacies.

**Common Formats Development**

AHRQ has established a process to develop Common Formats that: (1) Is evidence based; (2) harmonizes across governmental health agencies; (3) incorporates feedback from the private sector, including professional associations/organizations, those who use the formats, and the public; and (4) permits timely updating of these clinically-sensitive formats. It is planned that updated versions of the formats will be released annually by AHRQ as guidance. While the development and release of Common Formats is outside the scope of the regulations implementing the Patient Safety Act, AHRQ described its proposed development process in the Notice of Proposed Rulemaking referenced above and sought public comment. There were a significant number of strongly supportive comments about the process; there were no negative comments.

In anticipation of the need for Common Formats, AHRQ began their development in 2005 by creating an inventory of functioning private and public sector patient safety reporting systems. This inventory provides an evidence base to inform construction of the Common Formats. The inventory now numbers 64 and includes many systems from the private sector, including prominent academic settings, hospital systems, and international reporting systems (e.g., from the United Kingdom and the Commonwealth of Australia). In addition, virtually all major Federal patient safety reporting systems are included, such as those from the Centers for Disease Control and Prevention (CDC), the Food and Drug Administration (FDA), the Department of Defense (DoD), and the Department of Veterans Affairs (VA).

AHRQ convened an interagency Patient Safety Work Group (PSWG) to develop draft formats. Included in the PSWG are major health agencies within the Department—CDC, Centers for Medicare and Medicaid Services (CMS), FDA, Health Resources and Services Administration (HRSA), the Indian Health Service (IHS), the National Institutes of Health (NIH), the Office of the National Coordinator for Health Information Technology (ONC)—as well as the DoD and the VA.

The PSWG reviewed the AHRQ inventory, created draft Common Format data sets, harmonized individual data elements where possible, and created new data elements where necessary. From February through May of 2008, the draft Common Formats underwent two pilot tests in a significant number of healthcare facilities within DoD, IHS, and VA. These pilot tests were designed to provide guidance to refine the draft formats prior to their release as Version 0.1 Beta. The PSWG, acting as the focus for original development and continuing upgrading/maintenance will assure consistency of definitions/formats with those of relevant government agencies as refinement of the Common Formats continues.

The PSWG aligned the formats, to the extent practicable, with World Health Organization (WHO) concepts, framework, and definitions contained in their draft International Classification for Patient Safety (ICPS). The ICPS is currently under development.

AHRQ's initial construction of Common Formats thus draws on information from systems in both the public and private sectors, but was completed by a work group comprising only Federal agencies. To allow for greater participation by the private sector in the subsequent development of the Common Formats, AHRQ has engaged the National Quality Forum (NQF) to solicit comments and advice to guide future versions, as described below. It should be noted that the Common Formats Version 0.1 Beta can be implemented now, using AHRQ paper forms and the users guide. Other supporting materials will be made available shortly via the AHRQ Web site.

**Commenting on Common Formats Version 0.1 Beta**

AHRQ is committed to continuing refinement of the Common Formats. The Agency is specifically interested in obtaining feedback from both the private and public sectors—particularly from those who use the Common Formats—and it has established a process to receive initial feedback that will guide rapid improvement of the formats.

AHRQ has contracted with the NQF, a non-profit organization focused on healthcare quality, to assist with gathering and analyzing feedback on the Common Formats. In this role, the NQF will assist AHRQ in updating future versions of the formats by: Soliciting public comments from providers, professional organizations, the general public, and PSOs; triaging comments in terms of immediacy of importance; setting priorities; and convening expert panel(s) to offer advice on suggested improvements to the formats. This process will be a continuing one, guiding periodic updates of the Common Formats and, most importantly, reflecting the feedback of those using the formats. This latter group, the users, will be the most sensitive to and aware of needed updates and improvements to the formats.

**Future Releases**

While AHRQ's Version 0.1 Beta has been developed based on evidence, consensus of the PSWG, and results from initial testing, this version does not reflect the refinement that will come from large-scale use and repeated revision. We anticipate that we may get much helpful guidance from early users of the formats. For this reason, AHRQ

plans to release a second version of the formats in six to nine months, or perhaps sooner, depending on the nature of initial feedback. Once the formats are stabilized, AHRQ plans to release new versions annually. The Agency will follow the same process for formats developed for other settings.

AHRQ realizes that using Version 0.1 Beta paper forms is not the optimal way to collect patient safety data. Over time, computer software (developed in the private sector) will make use of the formats much more efficient. However, because the Agency plans an early second release of the Common Formats, it cautions software developers to understand that the first release of the formats will likely be substantially enhanced.

More information on the feedback process can be obtained through AHRQ's PSO Web site: *http://www.pso.ahrq.gov/index.html*.

Dated: August 21, 2008.

**Carolyn M. Clancy,**

*Director.*

[FR Doc. E8–19910 Filed 8–28–08; 8:45 am]

**BILLING CODE 4160–90–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifier: CMS-R–65]**

### 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:* Extension of a currently approved collection; *Title of Information Collection:* Information Collection Requirements in Final Peer Review Organizations Sanction Regulations—42 CFR 1004.4, 1004.50, 1004.60, and 1004.70; *Use:* The Peer Review Improvement Act of 1982 amended Title XI of the Social Security Act (the Act), creating the Utilization and Quality Control Peer Review Organization Program. Section 1156 of the Act imposes obligations on health care practitioners and others who furnish or order services or items under Medicare. This section also provides for sanction actions, if the Secretary determines that the obligations as stated by this section are not met. Quality Improvement Organizations (QIOs) are responsible for identifying violations. QIOs may allow practitioners or other entities, opportunities to submit relevant information before determining that a violation has occurred. The information collection requirements contained in this information collection request are used by the QIOs to collect the information necessary to make their decision. *Form Number:* CMS–R–65 (OMB# 0938–0444); *Frequency:* Reporting—On occasion; *Affected Public:* Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 53; *Total Annual Responses:* 53; *Total Annual Hours:* 14,310.

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 *October 28, 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: August 22, 2008.

**Michelle Shortt,**

*Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. E8–19975 Filed 8–28–08; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2008–N–0313]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Request for Inspection Under the Inspection by Accredited Persons Program

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by September 29, 2008.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *baguilar@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0569. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Denver Presley, Jr., Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3793.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

**Requests for Inspection Under the Inspection by Accredited Persons Program--21 U.S.C. 374(g) (OMB Control Number 0910–0569)—Extension**

Section 201 of the Medical Device User Fee and Modernization Act of 2002, (Public Law 107–250), amended section 704 of the Federal Food, Drug, and Cosmetic Act by adding subsection (g) (21 U.S.C. 374 (g)). This amendment authorized FDA to establish a voluntary third party inspection program applicable to manufacturers of class II or class III medical devices who meet certain eligibility criteria. On September 15, 2005, FDA issued a guidance entitled, ''Requests for Inspection by an Accredited Person Under the Inspection by Accredited Persons Program Authorized by Section 201 of the Medical Device User Fee and Modernization Act 2002,'' *http://www.fda.gov/cdrh/comp/guidance/1532.html*. This guidance describes the eligibility criteria and the process for establishments to follow when requesting FDA's approval to have an accredited person (AP), conduct a quality system regulation inspection of their establishment under the new inspection by the Accredited Persons Program (AP program), instead of FDA. The AP program applies to manufacturers who currently market their medical devices in the United States and who also market or plan to market their devices in foreign countries. Such manufacturers may need current inspections of their establishments to operate in global commerce.

In order to meet the eligibility criteria for requesting FDA approval to have an AP conduct a quality system regulations inspection of their establishment instead of FDA, applicants must submit a request with certain information. The following information must be submitted which shows that the applicant:

(1) ''Manufactures, prepares, propagates, compounds, or processes'' class II or class III medical devices,

(2) Markets at least one of the devices in the United States,

(3) Markets or intends to market at least one of the devices in one or more foreign countries when one or both of the following two conditions are met:

(a) One of the foreign countries certifies, accredits, or otherwise recognizes the selected AP applicant as a person authorized to conduct inspections of device establishments, or

(b) A statement that the law of a country where the applicant markets or intends to market the device recognizes an inspection conducted by the FDA or an AP.

(4) Provided the most recent inspection performed by FDA, or by an AP under the AP program and inspection was classified by FDA as either ''No Action Indicated'' or ''Voluntary Action Indicated, ''and,

(5) Provided notice advising FDA of their intent to use an AP, and identifying the AP applicant selected.

In the **Federal Register** of June 3, 2008 (73 FR 31692), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| 21 U.S.C. Section | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| 374(g) | 100 | 1 | 100 | 15 | 1,500 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

There are approximately 8,000 foreign and 10,000 domestic manufacturers of medical devices. Approximately 5,000 of these firms only manufacture class I devices and are, therefore, not eligible for the AP program. In addition, 40 percent of the domestic firms do not export devices and therefore are not eligible to participate in the AP program. Further, 10 to 15 percent of the firms are not eligible due to the results of their previous inspection. FDA estimates there are 4,000 domestic manufacturers and 4,000 foreign manufacturers that are eligible for inclusion under the AP program. Based on communications with industry, FDA estimates that on an annual basis approximately 100 of these manufacturers may submit a request to use an AP in any given year.

Dated: August 25, 2008.

**Jeffrey Shuren,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. E8–20113 Filed 8–28–08; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Category A and B Pathogens.

*Date:* September 18, 2008.

*Time:* 12 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

*Contact Person:* Lucy A. Ward, DVM, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramual Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–594–6635, *lward@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 21, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–19916 Filed 8–28–08; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1782–DR]**

### New Hampshire; 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 New Hampshire (FEMA–1782–DR), dated August 11, 2008, and related determinations.

**DATES:** *Effective Date:* August 11, 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 August 11, 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 New Hampshire resulting from severe storms, a tornado, and flooding on July 24, 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 New Hampshire.

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, Philip E. Parr, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

The following areas of the State of New Hampshire have been designated as adversely affected by this declared major disaster:

Belknap, Carroll, and Rockingham Counties for Public Assistance.

All counties within the State of New Hampshire 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 Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially 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. E8–20071 Filed 8–28–08; 8:45 am]

**BILLING CODE 9110–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1783–DR]**

### New Mexico; 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 New Mexico (FEMA–1783–DR), dated August 14, 2008, and related determinations.

**DATES:** *Effective Date:* August 14, 2008.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated August 14, 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 New Mexico resulting from severe storms and flooding beginning on July 26, 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 New Mexico.

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 for Lincoln County, and any other forms of assistance under the Stafford Act that you deem appropriate. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance 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, Nancy M. Casper, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

The following areas of the State of New Mexico have been designated as adversely affected by this declared major disaster:

Lincoln and Otero Counties for Public Assistance.

Lincoln County in the State of New Mexico is 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 Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially 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. E8–20072 Filed 8–28–08; 8:45 am]

**BILLING CODE 9110–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1784–DR]**

### Vermont; 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 Vermont (FEMA–1784–DR), dated August 15, 2008, and related determinations.

**DATES:** *Effective Date:* August 15, 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 August 15, 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 Vermont resulting from severe storms, a tornado, and flooding on July 18, 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 Vermont.

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 requested and 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, Philip E. Parr, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

The following areas of the State of Vermont have been designated as adversely affected by this declared major disaster:

Caledonia, Grand Isle, and Lamoille Counties for Public Assistance.

All counties within the State of Vermont 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 Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially 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. E8–20074 Filed 8–28–08; 8:45 am]

**BILLING CODE 9110–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1763–DR]**

### Iowa; Amendment No. 16 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 Iowa (FEMA–1763-DR), dated May 27, 2008, and related determinations.

**DATES:** *Effective Date:* August 12, 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 Iowa 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 May 27, 2008.

Audubon and Winnebago Counties for Individual Assistance.

Adair, Cass, Grundy, Guthrie, and Henry Counties for Individual Assistance (already designated for Public Assistance.)

Cherokee County for Public 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 Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially 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. E8–20069 Filed 8–28–08; 8:45 am]

**BILLING CODE 9110–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1763-DR]**

### Iowa; Amendment No. 18 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 Iowa (FEMA–1763-DR), dated May 27, 2008, and related determinations.

**DATES:** *Effective Date:* August 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:** The notice of a major disaster declaration for the State of Iowa 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 May 27, 2008.

Winnebago 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 Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially 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. E8–20076 Filed 8–28–08; 8:45 am]

**BILLING CODE 9110–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1773–DR]**

### Missouri; Amendment No. 9 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:* August 20, 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.

Mississippi, Perry, and Ste. Genevieve Counties for Public Assistance (already designated for emergency protective measures [Category B], limited to 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 Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially 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. E8–20078 Filed 8–28–08; 8:45 am]

**BILLING CODE 9110–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1782–DR]**

### New Hampshire; Amendment No. 1 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 New Hampshire (FEMA–1782–DR), dated August 11, 2008, and related determinations.

**DATES:** *Effective Date:* August 20, 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 New Hampshire 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 August 11, 2008.

Merrimack and Strafford Counties for Public 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 Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially 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. E8–20077 Filed 8–28–08; 8:45 am]

**BILLING CODE 9110–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1780–DR]**

### Texas; Amendment No. 4 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 Texas (FEMA–1780–DR), dated July 24, 2008, and related determinations.

**DATES:** *Effective Date:* August 13, 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 Texas 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 July 24, 2008.

Jim Hogg County for Public 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 Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially 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. E8–20070 Filed 8–28–08; 8:45 am]

BILLING CODE 9110–10–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1768–DR]**

### Wisconsin; Amendment No. 16 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:* August 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:** 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.

Walworth 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 Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially 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. E8–20075 Filed 8–28–08; 8:45 am]

BILLING CODE 9110–10–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R4–R–2008–N0152; 40136–1265–0000-S3]**

### Clarks River National Wildlife Refuge, Marshall, McCracken, and Graves Counties, KY

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of intent to prepare a comprehensive conservation plan and environmental assessment; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), intend to prepare a comprehensive conservation plan (CCP) and associated National Environmental Policy Act (NEPA) documents for Clarks River National Wildlife Refuge. We provide this notice in compliance with our CCP policy to advise other agencies, Tribes, and the public of our intentions, and to obtain suggestions and information on the scope of issues to consider in the planning process.

**DATES:** To ensure consideration, we must receive your written comments by October 14, 2008. An open house meeting will be held during the scoping phase of the CCP development process. The date, time, and place for the meeting will be announced in the local media.

**ADDRESSES:** Address comments, questions, and requests for more information to: Tina Chouinard, Natural Resource Planner, Fish and Wildlife Service, 6772 Hwy 76 South, Stanton, TN 38069.

**FOR FURTHER INFORMATION CONTACT:** Tina Chouinard; *Telephone:* 731/780–8208; *Fax:* 731/772–7839; *E-mail: tina_chouinard@fws.gov*.

**SUPPLEMENTARY INFORMATION:**

#### Introduction

With this notice, we initiate our process for developing a CCP for Clarks River National Wildlife Refuge in Marshall, McCracken, and Graves Counties, Kentucky.

This notice complies with our CCP policy to (1) advise other Federal and State agencies, Tribes, and the public of our intention to conduct detailed planning on this refuge; and (2) obtain suggestions and information on the scope of issues to consider in the environmental document and during development of the CCP.

## Background

*The CCP Process*

The National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee) (Improvement Act), which amended the National Wildlife Refuge System Administration Act of 1966, requires us to develop a CCP for each national wildlife refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing to the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Improvement Act.

Each unit of the National Wildlife Refuge System is established for specific purposes. We use these purposes as the foundation for developing and prioritizing the management goals and objectives for each refuge within the National Wildlife Refuge System mission, and to determine how the public can use each refuge. The planning process is a way for us and the public to evaluate management goals and objectives for the best possible conservation approach to this important wildlife habitat, while providing for wildlife-dependent recreation opportunities that are compatible with the refuge's establishing purposes and the mission of the National Wildlife Refuge System.

Our CCP process provides participation opportunities for Tribal, State, and local governments; agencies; organizations; and the public. At this time we encourage input in the form of issues, concerns, ideas, and suggestions for the future management of Clarks River National Wildlife Refuge. Special mailings, newspaper articles, and other media outlets will be used to announce opportunities for input throughout the planning process.

We will conduct the environmental assessment in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*); NEPA regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those laws and regulations.

On June 19, 1997, the Clarks River National Wildlife Refuge was established under the ''Emergency Wetland Resources Act of 1986 (100 Stat. 3582–91.)'' The purposes are ''* * * the conservation of the wetlands of the Nation in order to maintain the public benefits they provide and to help fulfill international obligations contained in various migratory bird treaties and conventions * * *'' 16 U.S.C. 3901(b), 100 Stat. 3583.

The refuge was first identified as a high priority site for protection in 1978 by the Service's bottomland hardwood conservation program. In 1991, the Kentucky Department of Fish and Wildlife Resources asked the Service to consider the site for protection as a unit of the National Wildlife Refuge System. The refuge currently consists of approximately 8,500 acres, with an approved acquisition boundary of approximately 18,000 acres that extends along the East Fork of the Clarks River from just south of Benton, Kentucky, northwest to within five miles of the city of Paducah, Kentucky. The office/visitor center and maintenance facilities are located on the refuge in Benton, Kentucky. The most common public use activities on the refuge consist of hunting, fishing, wildlife observation, wildlife photography, and hiking. Environmental education is also a significant use on the refuge.

## Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority:** This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: July 1, 2008.

**Cynthia K. Dohner,**

*Acting Regional Director.*

[FR Doc. E8–20086 Filed 8–28–08; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

## U.S. Geological Survey

## Interim Steering Committee for the National Climate Change and Wildlife Science Center

**AGENCY:** U.S. Geological Survey.

**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, Room B253.

**DATES:** September 23, 2008, commencing at 9:15 a.m. and adjourning at 12 p.m.

**FOR FURTHER INFORMATION CONTACT:** Robin Schrock, U.S. Geological Survey, 12201 Sunrise Valley Drive MS301, Reston, Virginia 20192, 703–648–4066, *Robin_Schrock@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 discuss the agenda for the planned December Workshop on climate change and wildlife research needs. The committee will use common themes and unique needs identified in previous meetings, including modeling, forecasting, and technology transfer, to build a workshop program that will explore additional needs and address the current state of knowledge and management and policy implications. The meeting will conclude with identification of potential workshop speakers and invitees.

Dated: August 22, 2008.

**Gladys Cotter,**

*Associate Chief Biologist for Information.*

[FR Doc. E8–20023 Filed 8–28–08; 8:45 am]

BILLING CODE 4311–AM–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[ES–020–08–1610–DQ–028M]**

### Notice of Availability of the Alabama and Mississippi 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 Alabama and Mississippi.

**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 Proposed RMP. 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 its notice in the **Federal Register**.

**ADDRESSES:** Copies of the Alabama and Mississippi PRMP/FEIS have been sent to affected Federal, State, and local government agencies and to interested parties. Copies of the Proposed RMP/FEIS are available for public inspection at the BLM–ES Jackson Field Office, 411 Briarwood Drive, Suite 404, Jackson, Mississippi 39206. Interested persons may also review the Proposed RMP/FEIS on the Internet at *http://www.es.blm.gov/AL_MS_RMP*. All protests must be in writing and must be mailed to:

*Regular Mail:* Director (210), *Attention:* Brenda Williams, P.O. Box 66538, Washington, DC 20035.

*Overnight Mail:* Director (210), *Attention:* Brenda Williams, 1620 L Street, NW., Suite 1075, Washington, DC 20036.

**FOR FURTHER INFORMATION, CONTACT:** Gary Taylor, Planning and Environmental Coordinator, Bureau of Land Management-Eastern States, Jackson Field Office, 411 Briarwood Drive, Jackson, Mississippi 39206. Mr. Taylor may also be contacted by telephone: (601) 977–5413.

**SUPPLEMENTARY INFORMATION:** This PRMP/FEIS covers all the public land resources administered by the BLM in the States of Alabama and Mississippi. The issues addressed in the PRMP/FEIS are mineral leasing and ownership adjustment of the scattered surface tracts. Within the two States combined, the BLM administers approximately 333 acres of public land surface and mineral estate and 621,090 acres of Federal minerals where the surface estate is in non-Federal ownership. The BLM also has responsibility for 2,081,880 acres of mineral estate where the surface is managed by other Federal agencies, including 1,871,550 acres of National Forest lands. On these lands, leasing of Federal minerals is subject to management as directed by the surface managing agency, and the decisions of this RMP will pertain only to the BLM's role in administering the minerals. The RMP will not make decisions on oil and gas leasing of National Forest acreage, because by regulation the U.S. Forest Service (USFS) is responsible for land use planning decisions on oil and gas leasing. Within the two States, there are also 9,788 acres of lands with uncertain title. These are public domain lands according to General Land Office records, but may have private claims of ownership. The RMP will not make management decisions on these lands per se; however, these lands will be available for disposal to qualified applicants under the Color-of-Title Act. Public participation was solicited during the formation of the Draft RMP/EIS through public meetings in Gulf Shore, AL; Birmingham, AL; and Jackson, MS.

Comments on the Draft RMP/EIS received from the public and internal BLM review were incorporated into the proposed plan. Public comments resulted in the addition of clarifying text, but did not significantly change proposed land use 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 Alabama and Mississippi PRMP/FEIS and at 43 CFR 1610.5. 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 address(es) 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.

Dated: March 25, 2008.

**Juan Palma,**

*State Director, Eastern States.*

**Editorial Note:** This document was received at the Office of the Federal Register on August 25, 2008.

[FR Doc. E8–19951 Filed 8–28–08; 8:45 am]

BILLING CODE 4310–GJ–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[UT–070–1610–011J]**

### Notice of Availability of the Price Field Office Proposed Resource Management Plan and Final Environmental Impact Statement (PRMP/FEIS)

**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 Price 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 Price 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: Price Field Office, 125 South 600 West, Price, UT 84501. 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/price/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:** Floyd Johnson, Price Field Office, 125 South 600 West, Price, UT 84501; *phone:* (435)636–3600; or *e-mail at: Floyd_Johnson@blm.gov.*

**SUPPLEMENTARY INFORMATION:** The Price RMP planning area is located in central Utah. The BLM administers approximately 2.5 million acres of surface estate and 2.8 million acres of Federal mineral estate within the planning area.

The Price 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 Draft RMP/EIS (DRMP/DEIS), which was released for public review and comment in July 2004, five alternatives were analyzed, including a No Action alternative. These alternatives were developed through issue identification during the scoping process. Public involvement and collaboration began with scoping to identify issues, concerns, and opportunities to be resolved in the planning process. Input on planning issues was gathered from the public during a comment period and associated open houses. The major issues addressed in the PRMP/DEIS include: oil and gas leasing and development; management of recreation opportunities in Special Recreation Management Areas (SRMAs), designation of routes for off-highway vehicle (OHV) travel, livestock grazing, management of Areas of Critical Environmental Concern (ACECs), and recommendations for Wild and Scenic Rivers (WSR) designations. In September 2007 a Supplemental DEIS was released for public review and comment which considered an additional alternative emphasizing the protection of non-WSA lands with wilderness characteristics. The PRMP/FEIS would designate five new ACECs, and the continuation of eight existing ACECs, totaling 206,965 acres. Resource use limitations that apply to the proposed ACECs include a range of 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 |
|---|---|---|---|
| Big Flat Tops | Relict vegetation | 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 | 192 |
| Bowknot Bend | Relict vegetation | 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 | 1,087 |
| Dry Lake Archaeological District | Cultural | 11, 12, 13, 14 | 18,010 |
| Interstate 70 | Scenic | 2, 5, 7, 9, 12, 13, 14 | 33,068 |
| Muddy Creek | Cultural, Historic, Scenic | 2, 5, 7, 9, 12 (1 in WSA), 13, 14, 15 | 25,119 |
| Pictographs/Rock Art | Cultural | 1, 2, 3, 4, 5, 6 (partial), 7, 8, 14 | 5,303 |
| San Rafael Canyon | Scenic | 5, 6 (partial), 7, 8, 9, 13, 14, 16 | 17,595 |
| San Rafael Reef | Scenic, Vegetation | 1, 2, 3, 4, 5, 7, 8, 9, 14 | 73,170 |
| Seger's Hole | Scenic | 2, 5, 7, 9, 12, 13, 14 | 7,067 |
| Nine Mile Canyon | Cultural | 14, 17, 18 | 26,211 |
| Cleveland-Lloyd Dinosaur Quarry. | Paleontologic | 2, 3, 19, 20, 21, 22, 1 (partial), 12 (partial) | 766 |
| Heritage Sites | Historic | 2, 3 (partial), 4, 7, 8, 12, 15, 23 | 1,095 |
| Uranium Mining Districts | Historic | 6, 12, 15, 24 | 2,201 |

1. Closed to oil and gas leasing.
2. Closed to mineral materials disposal.
3. Proposed for withdrawal from locatable mineral entry.
4. Excluded from ROW grants.
5. Excluded from private or commercial use of woodland products.
6. Excluded from livestock use.
7. Excluded from land treatments.
8. Excluded from range improvements.
9. VRM Class I.
10. Closed to OHV use.
11. Block cultural surveys required.
12. Oil and gas leasing subject to No Surface Occupancy.
13. Avoidance area for ROW grants.
14. OHV use limited to designated routes.
15. Firewood collection not allowed.
16. Oil and gas subject to minor constraints.
17. Oil and gas leasing subject to No Surface Occupancy on federal surface, Controlled Surface Use on split estate.
18. VRM Class II and III.
19. Closed to public access without authorization (use fee).
20. Camping not allowed.
21. Fossil and mineral collection not allowed.
22. Hiking on developed trails only.
23. VRM Class II.
24. No historic structures to be disturbed.

Comments on the Price 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.

**Authority:** 40 CFR 1506.6, 43 CFR 1610.2, 43 CFR 1610.5–1.

Dated: June 5, 2008.

**Selma Sierra,**

*Utah State Director.*

[FR Doc. E8–19950 Filed 8–28–08; 8:45 am]

**BILLING CODE 4310–DQ–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Intent to Repatriate a Cultural Item: Denver Museum of Nature & Science, Denver, CO

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item in the possession of the Denver Museum of Nature & Science, Denver, CO, which meets the definitions of ''sacred object'' and ''object of cultural patrimony'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural item. The National Park Service is not responsible for the determinations in this notice.

The cultural item is a ''piki stone'' from the Pueblo of Cochiti, New Mexico (A661.1). The piki stone is a sandstone slab, measuring approximately 26 x 19 x 2 inches, with the top surface blackened from baking. On November 10, 1972, the museum purchased the stone for $150 from Mr. Juan Melchoir of Cochiti Pueblo. Museum accession notes indicate that the stone dates to about 1930 and ''was used by his family for several generations for baking piki bread.'' The stone has long been a part of the museum's ''Hopi House'' exhibit in the Crane American Indian Cultures Hall.

During a consultation in the early 1990s, a group of council representatives from the Pueblo of Cochiti, New Mexico visited the museum and identified the stone as coming from the pueblo and determined that it was a sacred object and object of cultural patrimony; however, a formal claim was not officially submitted until 2006. The claim states that the Pueblo of Cochiti believes the stone ''was stored by Mr. Melchoir during remodeling phases of a traditional cooking building and sold to the individual who'' sold it to the museum and could not have been alienated by Mr. Melchoir, and thus is an object of cultural patrimony. The formal claim also states that the stone ''was used, and if repatriated would continue to be used, in traditional cooking ceremonies, conducted throughout the year by appointed Cochiti women, during times of traditional society events. These events involve many culturally sensitive ceremonies in which cooking, and piki bread, are of major significance to conduct the ceremony.'' Thus, the claim asserts that the stone is also a sacred object.

''Piki'' is a borrowed Hopi term to describe the wafer bread, while some use the Tewa term guayave, or a variation thereof; and at Cochiti it is ma'tzin. At Cochiti, the ''piki stone'' itself is also referred to as a comal or yo'asha. The anthropology and documentary literature has little information about yo'asha at the Pueblo of Cochiti. The few references that could be found would suggest that such stones are ''privately owned real property'' which can be owned, exchanged, traded, purchased, and inherited. Although the tribe concurs that some stones are privately held, during consultation, the Pueblo of Cochiti offered compelling evidence that a few special ones are communally owned and are stored in communal piki houses. They are used by community members for specific ceremonies, thus making them objects of cultural patrimony and sacred objects. Because museum documentation states that the stone in this notice was sold by Mr. Melchoir, the Pueblo knows its history, and that it was used by the entire community for religious events. Mr. Melchoir was responsible for the piki house in which the stone was placed, but the tribe claims that the people knew it was a house for everyone. Each year, specific leaders are appointed to do things on behalf of the entire community. According to tribal consultation, currently there is one communal piki house with one stone, an example of a shared place for making ma'tzin for ceremonies. The stone in the museum's possession came from a house of this type, and if returned, will go back into this particular house.

Anthropology and documentary literature does confirm that piki bread is used by many pueblos during religious ceremonies. For the people of Cochiti, ma'tzin was a traditional everyday foodstuff, but it was also eaten on religious feast days and for celebrations. The Pueblo of Cochiti concurs that ma'tzin was an everyday food item, but also emphasizes that it could have deep religious meanings at particular times and events. The Publeo of Chociti NAGPRA representative, Mr. Lee Suina, explained, ''You can go to a restaurant and have wine and bread, but when you go to church and eat wine and bread, it has more meaning. Since we know the piki was for this specific reason, then it's special. It's not an everyday form of bread, in this case.'' Mr. Suina explained that prayers were likely offered when the stone was quarried, and prayers were offered when the stone was used to make ma'tzin for numerous ceremonies.

Officials of the Denver Museum of Nature & Science have determined that, pursuant to 25 U.S.C. 3001 (3)(C), the cultural item is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Denver Museum of Nature & Science have also determined that, pursuant to 25 U.S.C. 3001 (3)(D), the cultural item has ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual. Lastly, officials of the Denver Museum of Nature & Science have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between the sacred object/object of cultural patrimony and the Pueblo of Cochiti, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred object/object of cultural patrimony should contact Dr. Chip Colwell-Chanthaphonh, Curator of Anthropology and NAGPRA Officer, Department of Anthropology, Denver Museum of Nature & Science, 2001 Colorado Boulevard, Denver, CO 80205, telephone (303) 370–6378, before September 29, 2008. Repatriation of the sacred object/object of cultural patrimony to the Pueblo of Cochiti, New

Mexico may proceed after that date if no additional claimants come forward.

The Denver Museum of Nature & Science is responsible for notifying the Pueblo of Cochiti, New Mexico that this notice has been published.

Dated: August 4, 2008.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. E8–20109 Filed 8–28–08; 8:45 am]

**BILLING CODE 4312–50–S**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Intent to Repatriate Cultural Items in the Possession of the Bernice Pauahi Bishop Museum, Honolulu, HI; Correction

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the intent to repatriate cultural items in the possession of the Bishop Museum, Honolulu, HI, that meet the definition of ''unassociated funerary objects'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the culturally affiliated Native Hawaiian organizations identified during the claimant process and provides new museum contact information for a Notice of Intent to Repatriate Cultural Items published in the **Federal Register** of October 10, 2002 (FR Doc 02–25874, page 63152) for unassociated funerary objects removed from Lana'i, HI.

The **Federal Register** notice of October 10, 2002 is corrected by substituting paragraph numbers 5 and 6 with the following paragraphs:

Officials of the Bishop Museum have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the 97 cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native Hawaiian individual. Officials of the Bishop Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Office of Hawaiian Affairs and Hui Kako'o. It has also been determined that Hui Kako'o is the most culturally affiliated Native Hawaiian organization for these unassociated funerary objects.

Representatives of any other Native Hawaiian organization that believes itself to be culturally affiliated with the unassociated funerary objects should contact Betty Lou Kam, Vice President of Cultural Resources, Bishop Museum, 1525 Bernice Street, Honolulu, HI 96718–2704, telephone (808) 848–4144, before September 29, 2008. Repatriation of the unassociated funerary objects to Hui Kako'o may proceed after that date if no additional claimants come forward.

The Bishop Museum is responsible for notifying Hui Kako'o, Hui Malama I Na Kupuna O Hawai'i Nei, Maui/Lana'i Island Burial Council, and the Office of Hawaiian Affairs that this notice has been published.

Dated: August 12, 2008.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. E8–20101 Filed 8–28–08; 8:45 am]

**BILLING CODE 4312–50–S**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Intent to Repatriate Cultural Items: Denver Museum of Nature & Science, Denver, CO

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Denver Museum of Nature & Science, Denver, CO, that meet the definition of ''unassociated funerary objects'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

On February 24, 1965, the collectors Mary W.A. and Francis V. Crane acquired 18 silver Seminole pendants from the antiquities dealer Howard B. Roloff. Records from the purchase transaction noted that the ''4 dark ones are from a burial over 100 years old.'' In 1968, the Cranes donated the Seminole pendants to the Denver Museum of Nature & Science (then Denver Museum of Natural History) (Accession Numbers AC.7940A-D). The museum exhibited the four pendants in its ''Seminole Silver Case'' between 1976 and 1980.

Historical and archeological evidence establish that Seminole and Miccosukee people have been residents in central and southern Florida for at least several hundred years. In consultations, representatives of the Miccosukee Tribe of Indians of Florida; Seminole Nation of Oklahoma; and Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations confirmed their affiliation with earlier historic American Indians in Florida and confirmed that the four pendants were very likely Seminole burial objects. Descendants of the Seminole are members of the Miccosukee Tribe of Indians of Florida; Seminole Nation of Oklahoma; and Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations.

Officials of the Denver Museum of Nature & Science have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the four cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed to have been removed from a specific burial site of a Native American individual. Officials of the Denver Museum of Nature & Science also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the cultural items and the Miccosukee Tribe of Indians of Florida; Seminole Nation of Oklahoma; and Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Dr. Chip Colwell-Chanthaphonh, NAGPRA Officer, Department of Anthropology, Denver Museum of Nature & Science, 2001 Colorado Boulevard, Denver, CO 80205, telephone (303) 370–6378, before September 29, 2008. Repatriation of the unassociated funerary items to the Miccosukee Tribe of Indians of Florida; Seminole Nation of Oklahoma; and Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations may proceed after that date

if no additional claimants come forward.

The Denver Museum of Nature & Science is responsible for notifying the Miccosukee Tribe of Indians of Florida; Seminole Nation of Oklahoma; and Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations that this notice has been published.

Dated: August 4, 2008.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. E8–20097 Filed 8–28–08; 8:45 am]

**BILLING CODE 4312–50–S**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Intent to Repatriate Cultural Items: Denver Museum of Nature & Science, Denver, CO

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Denver Museum of Nature & Science, Denver, CO, which meet the definitions of ''sacred objects'' and ''objects of cultural patrimony'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The first cultural item is called the Whale Hairpiece, carved from a section of mountain goat horn, measuring approximately 3 inches high, 1.5 inches in diameter at the base, and 1 inch in diameter at the top. Decorating the exterior of the horn are 18 abalone shell insets. The catalogue records term the object a ''hair holder or ornament'' and ''braid wrap.'' In August 1977, the cultural item was purchased by Mrs. Mary A. Crane from the art dealer Mr. Michael R. Johnson who had purchased the item from ''Mrs. Dan Katzeek'' in 1973. In a letter Mr. Johnson wrote to Mrs. Crane, dated August 30, 1977, he asserted,''I am convinced it is very old as the single braid or plaited hair in one clump has not been worn since the days of Cook and Vancouver. The style is evident in the early Webber drawings but seems to have faded out in Victorian times to the double braids or Victorian upsweeps and buns.'' Mrs. Crane donated the hairpiece to the Denver Museum of Nature & Science (then Denver Museum of Natural History) on May 27, 1983.

The second cultural item is called the Strongman Housepost Robe, a painted moose hide blanket, approximately 66 x 44 inches in size, with two hide strings at top. The center area, about 36 x 24.5 inches in size, has a painted design and ''VICTOR HOTCH KLUKWAN'' is painted at the top and also the inside bottom. In 1974, the cultural item was purchased by Michael R. Johnson from Victor Hotch. Museum records suggest that the image represents Strongman (a Tlingit hero, Dukt'ootl) ripping apart a sea lion; that it was a robe for wearing; and that this image was also used on house posts. The last claim was verified during consultations and supported by photographs of a Whale House post, taken from Klukwan in 1984. Mr. Johnson, who claimed the robe dates to about 1930, donated it to the Denver Museum of Nature & Science on October 3, 1974.

In the mid–1970s a decades-long controversy began over the ownership of Whale House objects. The public and legal battle engulfed Klukwan, museums, and collectors alike. Although these objects left Alaska several years prior to the controversy, nonetheless, the Denver Museum of Nature & Science acknowledges that these two objects likely left Alaska under suspect circumstances.

During consultation, representatives of the Central Council of the Tlingit & Haida Indian Tribes provided detailed written documentation of tribal and clan histories, the significance of the hairpiece and robe to the Gaanaxteidi Clan, and the importance of these objects in ongoing ceremonial practices. The official claim explained the right of the Gaanaxteidi Clan and Whale House to the symbolism embedded in these objects. The claim confirms the museum's records that the robe's design replicates the image of the Strongman Housepost, which has been well documented as belonging to the Whale House. This particular image tells the story of the Gaanaxteidi Clan's migration history. The hairpiece represents the whale itself, and the whale is a crest of the Gaanaxteidi Clan. The whale character figures prominently into the ''Raven Cycle'' stories. Additionally, the claim offers that the hairpiece, or yaay che'eeni, was worn by women to bundle the hair and only worn on ceremonial occasions with the assistance of the ''opposite'' moiety. It then explains more specifically how it would be ceremonially used exclusively by a woman of the aanyadi (high caste).

The claim argues that these pieces are objects of cultural patrimony, that the Hit s'aati (Housemaster) is only the steward of these clan objects. Under Tlingit traditional property law (now codified in tribal law) the trustee does not have the authority to sell clan property. Rather, clan consent is necessary for decisions about clan property. The published literature, based on a wide range of ethnological, folkloric, linguistic, and anthropological sources, supports these claims.

At length, the claim explains that these two objects are sacred objects, as clan crests both symbolize and embody the spirit of the being depicted on these objects. Crests represent the spiritual affinity and kinship between the clan members and the animals or mythical figures being represented. Clan members sometimes refer to their clan crests as Ax Shuka (My Ancestor or Relative), and may call upon these spirits in time of need. A specific code of conduct is maintained around these crests, which Tlingits traditionally believe are not truly things, but rather ''living beings.'' The claim asserts that, if returned, these objects will be used in the ongoing ceremonies of the Gaanaxteidi Clan.

Consultation evidence acknowledges that many of the clan-owned and sacred objects were removed from the communities by members of their own tribe. Nevertheless, these individuals acted in contravention of traditional Tlingit cultural property law. It is only the Gaanaxteidi Clan that has the right to display these objects and tell of its own history. The museum cannot provide any evidence that the Tlingit individuals who sold the objects had authority of alienation or consent of the clan. Based on the evidence of the larger Whale House controversy, it is highly likely that many clan members explicitly objected to the sale of these kinds of clan objects when Johnson purchased them, and continue to be objects of cultural patrimony and sacred objects owned by the clan.

Officials of the Denver Museum of Nature & Science have determined that, pursuant to 25 U.S.C. 3001 (3)(C), the two cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Denver Museum of Nature & Science have also determined that, pursuant to 25 U.S.C. 3001 (3)(D), the two cultural items have ongoing historical, traditional, or

cultural importance central to the Native American group or culture itself, rather than property owned by an individual. Lastly, officials of the Denver Museum of Nature & Science have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between the sacred objects/objects of cultural patrimony and the Central Council of the Tlingit & Haida Indian Tribes.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred objects/objects of cultural patrimony should contact Dr. Chip Colwell-Chanthaphonh, Curator of Anthropology, NAGPRA Officer, Department of Anthropology, Denver Museum of Nature & Science, 2001 Colorado Boulevard, Denver, CO 80205, telephone (303) 370–6378, before September 29, 2008. Repatriation of the sacred objects/objects of cultural patrimony to the Central Council of the Tlingit & Haida Indian Tribes on behalf of the Gaanaxteidi Clan, may proceed after that date if no additional claimants come forward.

The Denver Museum of Nature & Science is responsible for notifying the Central Council of the Tlingit & Haida Indian Tribes that this notice has been published.

Dated: August 4, 2008.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. E8–20108 Filed 8–28–08; 8:45 am]

**BILLING CODE 4312–50–S**

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## DEPARTMENT OF THE INTERIOR

## National Park Service

## Notice of Intent to Repatriate Cultural Items: Logan Museum of Anthropology, Beloit College, Beloit, WI

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Logan Museum of Anthropology (Logan Museum), Beloit College, Beloit, WI, that meet the definition of ''unassociated funerary objects'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

In 1955, the Logan Museum of Anthropology acquired a large collection from the estate of Albert Green Heath. Heath lived in Chicago and had a second home in Harbor Springs, Emmet County, MI, near the Odawa community of Cross Village. Heath was acquainted with many Odawa tribal members and collected many Odawa objects in the early 20th century, including six found with human burials. The six cultural items are one catlinite (red pipestone) pipe bowl (catalogue number 7759), three silver armbands (30678.1, 30678.2, 30678.3), one silver cross pendant (30685.1), and one brass or bronze crucifix pendant (30688).

In 1956, the pipe bowl (7759) was sold by the Logan Museum to Herbert S. Zim and Sonia Bleeker Zim. In 1971, the pipe bowl was donated back to the Logan Museum by Sonia Bleeker Zim. The pipe bowl is L-shaped, 5 cm high by 6.9 cm long, and is made of red pipestone presumed to be catlinite. The bowl is flared, and the stem end features two grooves. Both the bowl and the stem end are heat-discolored on the interior and exterior, and the bowl interior contains charred residue. Heath's collection records indicate this object was a ''grave find'' from Emmet County and that its tribal affiliation is Ottawa (Odawa).

The silver armbands (30678.1, 30678.2, and 30678.3) are three of four objects Heath described as ''early English trader's bracelets.'' The fourth in this set was sold to the New York State Museum in 1956. Heath's records indicate these armbands are ''grave finds'' from Emmet County and are Ottawa (Odawa). Two of the armbands (30678.1 and 30678.2) are 4.7 cm wide, have fluted edges, and were cut from one original piece, as shown by partial coat-of-arms engravings that form a single complete engraving when the two armbands are placed side by side. The third armband (30678.3) is 2.7 cm wide and has fluted edges. It also has a stamped touchmark, ''JS,'' which indicates manufacture in the late 18th century by Jonas Schindler or his widow, of Quebec, Canada.

The silver cross pendant (30685.1) is also a ''grave find'' from Emmet County, and is identified as Ottawa (Odawa) by Heath. The single-bar cross measures 6.8 cm long by 4.2 cm wide. Each side contains eleven small circular stamps, but there is no identifying touchmark. This general type of cross was commonly traded in the Great Lakes area in the 18th century. Heath's records indicate he purchased the cross from Louise Assineway. Census records show that two Odawa individuals named Louise (or Louisa) Assineway (or Assinaway) lived in the Cross Village area in the early 20th century.

The crucifix pendant (30688) is probably made of brass, but possibly is bronze. It measures 7.0 cm long by 4.2 cm wide and features the Christ figure riveted onto a cross with fleur-de-lis style ends, a suspension loop, and small ''INRI'' plaque. Heath's records indicate this crucifix is a ''grave find,'' and it is also identified as Ottawa (Odawa). The record also indicated that the crucifix is from Cross Village, MI, and was purchased from Cynthia Shomin. Census records show that Cynthia Shomin was an Odawa tribal member who lived in the Cross Village area in the early 20th century.

Geographic, historic, and archeological evidence indicates that Odawa Indians occupied the area of Cross Village and Emmet County, MI, in the late 18th and early 19th centuries. Metal and catlinite objects such as those listed above are commonly noted funerary objects in Odawa burials of that period. The human remains from the specific burial sites are not in the possession of the Logan Museum. The Little Traverse Bay Bands of Odawa Indians, Michigan still resides in that area, and consultation with tribal representatives supports the identification of the cultural items as Odawa funerary objects.

Officials of the Logan Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the six cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Logan Museum of Anthropology also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Little Traverse Bay Bands of Odawa Indians, Michigan.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact William Green, Director, Logan Museum of Anthropology, Beloit College, 700 College St., Beloit, WI 53511, telephone (608) 363–2119, before September 29, 2008. Repatriation of the unassociated

funerary objects to the Little Traverse Bay Bands of Odawa Indians, Michigan may proceed after that date if no additional claimants come forward.

The Logan Museum of Anthropology is responsible for notifying the Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Ottawa Tribe of Oklahoma; Burt Lake Band of Ottawa & Chippewa Indians, a non-federally recognized Indian group; and Grand River Bands of Ottawa Indians, a non-federally recognized Indian group, that this notice has been published.

Dated: August 14, 2008.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. E8–20098 Filed 8–28–08; 8:45 am]

**BILLING CODE 4312–50–S**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Intent to Repatriate Cultural Items: New York State Museum, Albany, NY

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the New York State Museum, Albany, NY, that meet the definition of ''unassociated funerary objects'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The two cultural items are one small copper kettle and one silver wristband. The silver wristband bears the maker's mark ''IS.''

In 1956, the New York State Museum purchased the kettle and wristband from the Logan Museum of Anthropology, Beloit College, WI. The cultural items were part of a larger collection made by Albert Green Heath who acquired the kettle and wristband from an individual named Lowell Lamkin between 1910 and 1916.

The Heath collection records indicate the kettle and wristband were found in a grave or graves in ''Emmet County, Michigan.'' The New York State Museum is not in possession of the human remains associated with the items. Therefore, based on museum records, the kettle and wristband are reasonably believed to be unassociated funerary objects. The style of the kettle and wristband date to the post-Contact period and are typical of metal trade items from the mid to late 18th century. Heath collection records identify the tribal identification of the items as Ottawa. Historical and traditional evidence indicates Ottawa people occupied Emmet County throughout the 18th century. The Ottawa people are also called Odawa. Descendants of the Odawa in Emmet County are members of the Grand Traverse Band of Ottawa and Chippewa Indians, Michigan, and Little Traverse Bay Bands of Odawa Indians, Michigan.

Officials of the New York State Museum have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the two cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the New York State Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and Grand Traverse Band of Ottawa and Chippewa Indians, Michigan, and Little Traverse Bay Bands of Odawa Indians, Michigan.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Lisa Anderson, NAGPRA Coordinator, New York State Museum, 3122 Cultural Education Center, Albany, NY 12230, telephone (518) 486–2020, before September 29, 2008. Repatriation of the unassociated funerary objects to the Little Traverse Bay Bands of Odawa Indians, Michigan, may proceed after that date if no additional claimants come forward.

New York State Museum is responsible for notifying the Grand Traverse Band of Ottawa and Chippewa Indians, Michigan, and Little Traverse Bay Bands of Odawa Indians, Michigan that this notice has been published.

Dated: August 4, 2008.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. E8–20103 Filed 8–28–08; 8:45 am]

**BILLING CODE 4312–50–S**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Intent to Repatriate Cultural Items: U.S. Department of the Interior, National Park Service, San Juan Island National Historical Park, Friday Harbor, WA and Thomas Burke Memorial Washington State Museum, University of Washington, Seattle, WA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Thomas Burke Memorial Washington State Museum (Burke Museum) University of Washington, Seattle, WA, and in the control of the U.S. Department of the Interior, San Juan Island National Historical Park, Friday Harbor, WA, that meet the definition of ''unassociated funerary objects'' under 25 U.S.C 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the superintendent, San Juan Island National Historical Park.

In 1946 and 1947, human remains and associated funerary objects were recovered during legally authorized excavations by University of Washington archeologist Arden King at the Cattle Point Site (45–SJ–01) on San Juan Island. Cattle Point is within the American Camp portion of San Juan Island National Historical Park on the southern part of San Juan Island. The funerary objects were transferred to the Burke Museum and later accessioned by the National Park Service. The whereabouts of the human remains is not known. The 249 unassociated funerary objects are 103 basalt flakes, 60 non-human mammalian bone fragments, 61 shell fragments, 2 bags of fish bones, 11 charcoal samples, 1 rock, 2 sediment samples, 1 piece of obsidian, 1 fire cracked cobble, 1 quartz flake, 1 piece of schist, 2 pieces of slate, 1 pebble, 1 sea urchin spine, and 1 sea lion humerus.

In 1970 and 1972, authorized excavations of a shell midden took place at the English Camp Site (45–SJ–24) on San Juan Island and within the English Camp portion of San Juan Island National Historical Park during a University of Idaho field school directed by Dr. Roderick Sprague.

Four objects were recovered in 1970 from the same stratum in which a burial

was found. The human remains were transferred to the University of Idaho before being repatriated to the Lummi Tribe of the Lummi Reservation, Washington on June 26, 1991. The four funerary objects were transferred to the Burke Museum and accessioned by the National Park Service. The four unassociated funerary objects are one portion of a non-human mammalian limb bone, one basalt shatter fragment, one triangular basalt point fragment, and one ground abrader fragment.

The 1972 excavation recovered 32 objects that were associated with three burials. The human remains were transferred to the University of Idaho and subsequently repatriated to the Lummi Tribe of the Lummi Reservation, Washington on June 26, 1991. The funerary objects were transferred to the Burke Museum and accessioned by the National Park Service. The 32 unassociated funerary objects are 2 fish vertebrae, 1 antler tine fragment, 1 fused bird wing bone, 24 fragments of non-human bone, 2 pieces of fire modified rock, 1 basalt shatter fragment, and 1 point fragment.

Arden King's analysis of archeological data from Cattle Point resulted in the identification of three prehistoric phases, with the most recent representing a maritime adaptation that is ancestral to historic native populations in the United States and Canada. Archeological research and analysis indicates continuous habitation of San Juan Island, including the two sites mentioned here, from approximately 2,000 years ago through the mid–19th century. Anthropologist Wayne Suttles has identified the occupants of San Juan Island as Northern Straits language speakers, a linguistic subset of a larger Central Coast Salish population, who were ancestors of the Lummi Tribe of the Lummi Reservation, Washington. Furthermore, Suttles' anthropological research in the late 1940s confirmed that the Lummi primarily occupied San Juan Island and other nearby islands in the European contact period and during the early history of the Lummi Reservation that was established on the mainland in 1855, through Article II of the Treaty of Point Elliott. San Juan Island is within the aboriginal territory of the Lummi Tribe of the Lummi Reservation, Washington. Lummi oral tradition, history and anthropological data clearly associate the Lummi with San Juan Island.

The Samish Indian Tribe, Washington is most closely associated with the Lummi Tribe of the Lummi Reservation, Washington linguistically and culturally, and the Samish regard San Juan Island to be within the usual and accustomed territory shared by both tribes at the time of negotiations for the Treaty of Point Elliott, in 1855. In 2006, the Samish Indian Tribe, Washington and the Lummi Tribe of the Lummi Reservation, Washington entered into a cooperative agreement to have the Lummi Tribe take the lead in receiving repatriated human remains and funerary objects from San Juan Island National Historical Park. The traditional territory of the Swinomish Indians of the Swinomish Reservation, Washington is on the mainland in the vicinity of La Conner, WA, on Whidbey Island and Fidalgo Island, the site of their reservation.

Officials of San Juan Island National Historical Park have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the 285 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from specific burial sites of Native American individuals. Officials of San Juan Island National Historical Park also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Lummi Tribe of the Lummi Reservation, Washington.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Peter Dederich, superintendent, San Juan Island National Historical Park, P.O. Box 429, Friday Harbor, WA 98250–04289, telephone (360) 378–2240, before September 29, 2008. Repatriation of the unassociated funerary objects to the Lummi Tribe of the Lummi Reservation, Washington may proceed after that date if no additional claimants come forward.

San Juan Island National Historical Park is responsible for notifying the Lummi Tribe of the Lummi Reservation, Washington; Samish Indian Tribe, Washington; and Swinomish Indians of the Swinomish Reservation, Washington that this notice has been published.

Dated: July 31, 2008.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. E8–20107 Filed 8–28–08; 8:45 am]

BILLING CODE 4312–50–S

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Intent to Repatriate Cultural Items: U.S. Department of the Interior, Bureau of Land Management, Buffalo Field Office, Buffalo, WY

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the U.S. Department of the Interior, Bureau of Land Management, Buffalo Field Office, Buffalo, WY, that meet the definition of ''unassociated funerary objects'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

In 1986, human remains and cultural items were removed from a site adjacent to the location of the Dull Knife Battle, Johnson County, WY. The Bureau of Land Management, Buffalo Field Office, was required to analyze potential impacts from a proposed Federal action pursuant to Section 106 of the National Historic Preservation Act on a known burial site located on Bureau of Land Management public lands. The burial is adjacent to the location of the Dull Knife Battle of November 1876 between the U.S. Cavalry and a camp of Northern Cheyenne. The close proximity of the burial to the battle ground suggests a direct association. On June 29, 1987, the interment was removed and analyzed in the field. Osteological analysis showed that the human remains were of an adult female of Native American descent. The human remains and associated sediments were replaced into the original location. However, 15 funerary objects were removed for analysis, and subsequently stored in the Buffalo Field Office. The 15 funerary objects are 1 brown wool fabric fragment (appears to be from the late 19th century); 2 brown wool fragments from a horse blanket (appears to be from the 19th century); 7 blue wool fragments (appears to be from an 1876–era U.S. Army blanket); 1 red and white striped cotton fabric fragment; 2 tanned leather fragments; 1 fragment of rawhide or un-tanned leather; and 1 wood fragment.

A detailed assessment of the funerary objects was made by the Bureau of Land

Management, Buffalo Field Office staff in consultation with the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana. Based on the close proximity of the burial to the Dull Knife Battle of 1876, historical evidence that the Northern Cheyenne were party to this battle, and that the funerary objects are likely contemporaneous with this battle, the officials of the Bureau of Land Management have reasonably determined that the burial and the funerary objects belong to a Northern Cheyenne participant in this battle. Descendants of the Northern Cheyenne are members of the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana.

Officials of the Bureau of Land Management have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the 15 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Bureau of Land Management also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Chris Hanson, Bureau of Land Management, Buffalo Field Office, 1425 Fort Street, Buffalo, WY 82834, telephone (307) 684–1141, before September 29, 2008. Repatriation of the unassociated funerary objects to the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana may proceed after that date if no additional claimants come forward.

The Bureau of Land Management is responsible for notifying the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana that this notice has been published.

Dated: August 5, 2008.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. E8–20089 Filed 8–28–08; 8:45 am]

BILLING CODE 4312–50–S

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Minnesota Indian Affairs Council, St. Paul and Bemidji, MN; Correction

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Minnesota Indian Affairs Council, St. Paul and Bemidji, MN. The human remains were removed from Goodhue County, MN.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice is an addition of a minimum number individuals removed from the Bryan site (21GD4), Goodhue County, MN, which were previously described in a Notice of Inventory Completion published in the **Federal Register** of July 23, 1999 (FR Doc 99–18890, pages 40039–40040). An additional seven individuals were discovered in the collection.

In the **Federal Register** of July 23, 1999, the notice is corrected by adding the following paragraphs:

In 1983, human remains representing a minimum of six individuals were removed from the Bryan site (21GD4), Goodhue County, MN, during archeological excavations conducted by the University of Minnesota. No known individuals were identified. No associated funerary objects are present.

In 1999–2000, human remains representing a minimum of one individual were removed from the Bryan site (21GD4), Goodhue County, MN, during archeological excavations conducted by the Institute for Minnesota Archaeology. No known individual was identified. No associated funerary objects are present.

In the **Federal Register** of July 23, 1999, paragraph numbers 30 and 31 are corrected by substituting the following paragraphs:

Officials of the Minnesota Indian Affairs Council have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 124 individuals of Native American ancestry. Officials of the Minnesota Indian Affairs Council have also determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 57 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Minnesota Indian Affairs Council have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Iowa Tribe of Kansas and Nebraska, Iowa Tribe of Oklahoma, and Otoe-Missouria Tribe of Indians, Oklahoma.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Mr. James L. (Jim) Jones, Cultural Resource Director, Minnesota Indian Affairs Council, 3801 Bemidji Avenue North, Suite 5, Bemidji, MN 56601, telephone (218) 755–3223, before September 29, 2008. Repatriation of the human remains and associated funerary objects to the Iowa Tribe of Kansas and Nebraska, Iowa Tribe of Oklahoma, and Otoe-Missouria Tribe of Indians, Oklahoma may proceed after that date if no additional claimants come forward.

The Minnesota Indian Affairs Council is responsible for notifying the Iowa Tribe of Kansas and Nebraska, Iowa Tribe of Oklahoma, and Otoe-Missouria Tribe of Indians, Oklahoma that this notice has been published.

Dated: August 4, 2008.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. E8–20106 Filed 8–28–08; 8:45 am]

BILLING CODE 4312–50–S

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion: Central Washington University, Department of Anthropology, Ellensburg WA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act

(NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of Central Washington University, Department of Anthropology, Ellensburg, WA. The human remains were removed from Umatilla County, OR.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Central Washington University, Department of Anthropology professional staff in consultation with representatives of the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; and Confederated Tribes of the Warm Springs Reservation of Oregon.

In 1949, human remains representing a minimum of one individual were removed from site 35–UM–20, on the Techumtas Island in the Columbia River, Umatilla County, OR, by the Smithsonian River Basin Survey under the direction of Dr. Douglas Osborne. Site 35–UM–20 was one of eight sites tested during the summer of 1949. In 1974, the Thomas Burke Memorial Washington State Museum (Burke Museum), University of Washington, Seattle, WA, legally transferred the human remains to Central Washington University, Department of Anthropology. No known individual was identified. No associated funerary objects are present.

Roger Heglar, a University of Washington graduate student, conducted extensive osteometric analysis of human remains at the Burke Museum for his 1957 Master's Thesis, ''A Racial Analysis of Indian Skeletal Material from the Columbia River Valley.'' Dr. Osborne provided some of the skeletal remains for the analysis. Heglar identified one individual as ''35–UM–20 Burial 2 from Cold Springs, Oregon (north).'' Measurements recorded by Central Washington University, Department of Anthropology physical anthropologist match Heglar's measurements of the 35–UM–20 Burial 2.

Early and late ethnographic sources identify the area around Techumtas Island and Cold Springs as territory of the Cayuse, Walla Walla, and Umatilla tribes (Hale 1841; Stern 1998; Ray 1936). The Cayuse, Walla Walla, and Umatilla were separate tribes prior to the treaty of June 9, 1855, but were removed to the Umatilla Reservation under the terms of the Walla Walla Treaty. The three tribes were officially confederated in 1949.

The Cold Springs area was heavily utilized by the Umatilla, including the spring and summer camp, *tu'woyepa*, on the Oregon side of the Columbia River, between Umatilla and Cold Springs (Ray 1936). The area north of Cold Springs, including Techumtas Island, is within the aboriginal territory of the Confederated Tribes of the Umatilla Indian Reservation, Oregon, as determined by the Indian Claims Commission.

The human remains have been determined to be Native American based on geographic, historical, and osteological evidence, and culturally affiliated to the Confederated Tribes of the Umatilla Indian Reservation, Oregon.

Officials of the Central Washington University, Department of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Central Washington University Department of Anthropology also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Confederated Tribes of the Umatilla Indian Reservation, Oregon.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Lourdes Henebry-DeLeon, NAGPRA Program Director, Central Washington University, Department of Anthropology, 400 East University Way, Ellensburg, WA 98926–7544, telephone (509) 963–2671, before September 29, 2008. Repatriation of the human remains to the Confederated Tribes of the Umatilla Indian Reservation, Oregon may proceed after that date if no additional claimants come forward.

The Central Washington University, Department of Anthropology is responsible for notifying the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; and Confederated Tribes of the Warm Springs Reservation of Oregon that this notice has been published.

Dated: August 6, 2008.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. E8–20110 Filed 8–28–08; 8:45 am]

**BILLING CODE 4312–50–S**

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## DEPARTMENT OF THE INTERIOR

## National Park Service

## Notice of Inventory Completion: Horner Collection, Oregon State University, Corvallis, OR

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the Horner Collection, Oregon State University, Corvallis, OR. The human remains were removed from Lopez and Decatur Islands, San Juan County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Horner Collection, Oregon State University professional staff in consultation with representatives of the Samish Indian Tribe, Washington. The following tribes were notified, but did not participate in consultations concerning the human remains in this notice: Confederated Tribes of the Chehalis Reservation, Washington; Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Warm Springs Reservation of Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; Cowlitz Indian Tribe, Washington; Hoh Indian Tribe of the Hoh Indian Reservation, Washington; Jamestown S'Klallam Tribe of Washington; Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington; Lummi Tribe of the Lummi Reservation, Washington; Makah Indian Tribe of the Makah Indian Reservation, Washington; Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington; Nez Perce Tribe, Idaho (formerly listed as Nez Perce Tribe of Idaho); Nisqually Indian Tribe of the Nisqually Reservation, Washington; Nooksack Indian Tribe of

Washington; Port Gamble Indian Community of the Port Gamble Reservation, Washington; Puyallup Tribe of the Puyallup Reservation, Washington; Quileute Tribe of the Quileute Reservation, Washington; Quinault Tribe of the Quinault Reservation, Washington; Sauk-Suiattle Indian Tribe of Washington; Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington; Skokomish Indian Tribe of the Skokomish Reservation, Washington; Snoqualmie Tribe, Washington; Squaxin Island Tribe of the Squaxin Island Reservation, Washington; Stillaguamish Tribe of Washington; Suquamish Indian Tribe of the Port Madison Reservation, Washington; Swinomish Indians of the Swinomish Reservation, Washington; Tulalip Tribes of the Tulalip Reservation, Washington; and Upper Skagit Indian Tribe of Washington.

At an unknown time, human remains representing a minimum of two individuals were removed from Lopez and Decatur Islands in San Juan County, WA. The human remains came into the Horner Collection at an unknown time, but are described in an inventory report conducted in the early 1970s. The human remains were located in Oregon State University's Anthropology Department during an inventory in 2006. No known individuals were identified. No associated funerary objects are present.

Both individuals appear to be part of the Ethan Allen Collection, as ''Ethan Allen Collection'' is written on each skull. The Ethan Allen Collection had been on loan to the Horner Collection sometime in the past. Ethan Allen was known to collect Native American artifacts from all over the Puget Sound area, including the San Juan Islands. Additional writing appears on both skulls. One individual has ''Decatur Island, Puget Sound'' and the other ''Lopez Island, Puget Sound.'' Osteologist professionals of the Anthropology Department at Oregon State University have determined that both skulls are of Native American ancestry. Traditional territory for the Samish Indian Tribe includes Samish Island, Guemes Island, eastern Lopez Island, Cypress Island, and Fidalgo Island. Both Lopez and Decatur Islands are within Samish traditional territory and continue to be used by the Samish Indian Tribe, Washington.

Officials of the Horner Collection, Oregon State University have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of two individuals of Native American ancestry. Officials of the Horner Collection, Oregon State University also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Samish Indian Tribe, Washington.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Sabah Randhawa, Executive Vice President and Provost, President's Office, Oregon State University, 600 Kerr Administration Building, Corvallis, OR 97331, telephone (541) 737–8260, before September 29, 2008. Repatriation of the human remains to the Samish Indian Tribe, Washington may proceed after that date if no additional claimants come forward.

The Horner Collection, Oregon State University is responsible for notifying the Confederated Tribes of the Chehalis Reservation, Washington; Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Warm Springs Reservation of Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; Cowlitz Indian Tribe, Washington; Hoh Indian Tribe of the Hoh Indian Reservation, Washington; Jamestown S'Klallam Tribe of Washington; Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington; Lummi Tribe of the Lummi Reservation, Washington; Makah Indian Tribe of the Makah Indian Reservation, Washington; Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington; Nez Perce Tribe, Idaho; Nisqually Indian Tribe of the Nisqually Reservation, Washington; Nooksack Indian Tribe of Washington; Port Gamble Indian Community of the Port Gamble Reservation, Washington; Puyallup Tribe of the Puyallup Reservation, Washington; Quileute Tribe of the Quileute Reservation, Washington; Quinault Tribe of the Quinault Reservation, Washington; Samish Indian Tribe, Washington; Sauk-Suiattle Indian Tribe of Washington; Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington; Skokomish Indian Tribe of the Skokomish Reservation, Washington; Snoqualmie Tribe, Washington; Squaxin Island Tribe of the Squaxin Island Reservation, Washington; Stillaguamish Tribe of Washington; Suquamish Indian Tribe of the Port Madison Reservation, Washington; Swinomish Indians of the Swinomish Reservation, Washington; Tulalip Tribes of the Tulalip Reservation, Washington; and Upper Skagit Indian Tribe of Washington that this notice has been published.

Dated: July 28, 2008.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. E8–20099 Filed 8–28–08; 8:45 am]

BILLING CODE 4312–50–S

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion: Minnesota Indian Affairs Council, St. Paul and Bemidji, MN

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary object in the possession of the Minnesota Indian Affairs Council, St. Paul and Bemidji, MN. The human remains and associated funerary object were removed from Faribault and Goodhue Counties, MN.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Minnesota Indian Affairs Council professional staff in consultation with representatives of the Iowa Tribe of Kansas and Nebraska, Iowa Tribe of Oklahoma, and Otoe-Missouria Tribe of Indians, Oklahoma.

In 1935, human remains representing a minimum of two individuals were removed from a mound on the Cady Farm (21GD17), Goodhue County, MN, by Edward Schmidt, an avocational archeologist. No known individuals were identified. No associated funerary objects are present.

Site records in the Minnesota Office of the State Archaeologist record a minimum of 226 mounds at the Cady Farm site, and suggest an Oneota cultural affiliation. Based on continuities of material culture, historical documents, and oral history, the Oneota phase of the Mississippian archeological culture has been determined to be ancestral to the present-day Otoe and Ioway.

At an unknown date, human remains representing a minimum of one

individual were removed from the Bartron farm (21GD2), near Red Wing, Goodhue County, MN, by Edward Schmidt, an avocational archeologist No known individual was identified. No associated funerary objects are present.

Site records in the Minnesota Office of the State Archaeologist indicate that the Bartron Site is a village site of Oneota cultural affiliation. Based on continuities of material culture, historical documents, and oral history, the Oneota phase of the Mississippian archeological culture has been determined to be ancestral to the present-day Otoe and Ioway.

In 1960–62, human remains representing a minimum of five individuals were removed from the Fort Sweney site (21GD86), Goodhue County, MN, during archeological excavations conducted by the Science Museum of Minnesota. No known individuals were identified. No associated funerary objects are present.

Site records in the Minnesota office of the State Archaeologist indicate that Fort Sweney is a multi-component cemetery and habitation site with Late Woodland and Oneota components. The mortuary styles of the burials excavated in 1960–62 indicate that they are associated with the Oneota component of the site. Based on continuities of material culture, historical documents, and oral history, the Oneota phase of the Mississippian archeological culture has been determined to be ancestral to the present-day Otoe and Ioway.

In 1998, human remains representing a minimum of two individuals were removed from the Vosburg site (21FA2), Faribault County, MN, during archeological excavations conducted by the University of Minnesota. No known individual was identified. The one associated funerary object is a segment of rib from a large mammal.

Site records in the Minnesota office of the State Archaeologist indicate that the Vosburg site is a cemetery and habitation site classified as belonging to the Blue Earth/Oneota phase. Based on continuities of material culture, historical documents, and oral history, the Oneota phase of the Mississippian archeological culture has been determined to be ancestral to the present-day Otoe and Ioway. Descendants of the Otoe and Ioway are members of the Iowa Tribe of Kansas and Nebraska, Iowa Tribe of Oklahoma, and Otoe-Missouria Tribe of Indians, Oklahoma.

Officials of the Minnesota Indian Affairs Council have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 10 individuals of Native American ancestry. Officials of the Minnesota Indian Affairs Council also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the one object described above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Minnesota Indian Affairs Council have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary object and the Iowa Tribe of Kansas and Nebraska, Iowa Tribe of Oklahoma, and Otoe-Missouria Tribe of Indians, Oklahoma.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary object should contact James L. (Jim) Jones, Jr., Cultural Resource Director, Minnesota Indian Affairs Council, 3801 Bemidji Avenue North, Suite 5, Bemidji, MN 56601, telephone (218) 755–3223, before September 29, 2008. Repatriation of the human remains and associated funerary object to the Iowa Tribe of Kansas and Nebraska, Iowa Tribe of Oklahoma, and Otoe-Missouria Tribe of Indians, Oklahoma may proceed after that date if no additional claimants come forward.

The Minnesota Indian Affairs Council is responsible for notifying the Iowa Tribe of Kansas and Nebraska, Iowa Tribe of Oklahoma, and Otoe-Missouria Tribe of Indians, Oklahoma that this notice has been published.

Dated: August 4, 2008.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. E8–20093 Filed 8–28–08; 8:45 am]

**BILLING CODE 4312–50–S**

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## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion: Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA. The human remains and associated funerary objects were removed from Siskiyou County, CA.

This notice is published as part of the National Park Service's administration responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

An assessment of documents associated with the human remains and associated funerary objects was made by professional staff of the Phoebe A. Hearst Museum of Anthropology in consultation with representatives of the Confederated Tribes of the Grand Ronde Community of Oregon; Confederated Tribes of the Siletz Reservation, Oregon; and Quartz Valley Indian Community of the Quartz Valley Reservation of California.

In 1955, human remains representing a minimum of 21 individuals were removed from CA-Sis–262 (also known as the Foster site), a site located along Bogus Creek in Siskiyou County, CA, by J. Foster, the landowner, and J.A. Bennyhoff and A.B. Elsasser of the University of California Archaeological Survey. The human remains and associated funerary objects were accessioned into the museum later that same year (Accession UCAS–357). No known individuals were identified. The 31,970 associated funerary objects are 4 lots of animal bones (including horse and dog burials); 3 arrow points; 1 fragment of baked clay; 2 bangles; 55 basketry fragments; 31,246 beads (approximate count); 73 bells; 1 belt fragment; 3 blades; 13 bracelets; 2 buckles; 226 buttons; 100 charcoal fragments (approximate count); 2 china fragments; 1 obsidian flake; 2 clappers; 32 cloth fragments; 12 cordage fragments; 1 glass fragment; 2 handles; 1 harness; 2 hatched handles; 2 hooks; 5 iron fragments; 1 lead or pewter fragment; 1 piece of leather; 2 nail fragments; 65 pendants; 2 pestles; 1 pipe fragment; 2 porcelain fragments; 2 pots; 1 rivet; 1 rod; 1 scissors fragment; 1 screw; 1 sheat; 1 shell fragment; 2 sherds; 1 shoe sole; 2 shots; 1 spool; 3 spoon fragments; 21 animal teeth; 66 thimbles; and 1 wire fragment.

CA-Sis–262 was an historic cemetery located on the west bank of Bogus Creek, a tributary of the Klamath River, about 1 mile south of Foster's Ranch. The site was destroyed during the process of diverting Bogus Creek from its original course between May 7 and

May 12, 1955. Prior to the site's destruction, the University of California Archaeological Survey received permission to excavate the site by the landowner who had earlier removed human remains and artifacts. Museum documents indicate that some of the artifacts were kept by the landowner while all the human remains were given to the museum without, however, any accompanying documentation.

The antiquity of CA-Sis–262 is known through the presence of Desert side notched points that indicate that the site was in use during the Tule Lake Phase (after A.D. 1500). The recovery of some coins minted in A.D. 1776, 1781, and 1860, further refine the chronological timeline of some of the burials. Two newspaper articles, which were published at the time of the University of California Archaeological Survey excavation, reported that a woman of Indian descent recalled the story of a deadly ambush that happened sometime between 1863 and 1866 when a German peddler and a group of Shasta were killed by members of the Modoc (Sacramento Bee, May 11, 1955; Oakland Tribune, May 29, 1955). After the soldiers came and ran off the Modoc, the Shasta went back and buried their dead with the exception of the German peddler who was buried by the soldiers in a different location. These newspaper accounts suggest that (at least part of) the site is the result of a deadly skirmish between the Modoc and the Shasta sometime between 1863 and 1866.

The Shasta language belongs to the Hokan stock, which is probably the oldest language stock in California (Shipley 1978). At the time of contact with the Europeans, Shasta-speakers inhabited Siskiyou County, as well as parts of Oregon's Jackson and Klamath Counties. The first contact with Europeans came in the early part of the 19th century in the form of fur trappers, as indicated by the Shasta word for ''White,'' which is the Chinook Jargon word for ''Boston'' (Silver 1978:212). The first published personal account of the Shasta came from the United States Exploring Expedition that passed through Shasta territory in 1841 on its way to San Francisco (Dixon 1907:389). For the area and the native population, the biggest impact came with the Gold Rush in the 1850s. The destruction of food sources and the general hostility of the miners led to a rapid decline in the Shasta population. In 1851, the Shasta signed one of the infamous unratified treaties. In the agreement, their reservation was to be in Scott Valley, CA. In 1856, however, the Shasta were taken first to the Grande Ronde and then to the Siletz reservations in Oregon. In 1962, only a small number of surviving members were living on the Quartz Valley Rancheria in California, which is located in Siskiyou County (Silver 1978:212). The descendants of the Shasta are members of the Confederated Tribes of the Grand Ronde Community of Oregon; Confederated Tribes of the Siletz Reservation, Oregon; and Quartz Valley Indian Community of the Quartz Valley Reservation of California.

Officials of the Phoebe A. Hearst Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 21 individuals of Native American ancestry. Officials of the Phoebe A. Hearst Museum of Anthropology have also determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 31,970 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Phoebe A. Hearst Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Confederated Tribes of the Grand Ronde Community of Oregon; Confederated Tribes of the Siletz Reservation, Oregon; and Quartz Valley Indian Community of the Quartz Valley Reservation of California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Judd King, Interim Director of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA 94720, telephone (510) 642–3682, before September 29, 2008. Repatriation of the human remains and associated funerary objects to the Confederated Tribes of the Grand Ronde Community of Oregon; Confederated Tribes of the Siletz Reservation, Oregon; and Quartz Valley Indian Community of the Quartz Valley Reservation of California may proceed after that date if no additional claimants come forward.

The Phoebe A. Hearst Museum of Anthropology is responsible for notifying the Confederated Tribes of the Grand Ronde Community of Oregon; Confederated Tribes of the Siletz Reservation, Oregon; and Quartz Valley Indian Community of the Quartz Valley Reservation of California that this notice has been published.

Dated: July 28, 2008.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. E8–20092 Filed 8–28–08; 8:45 am]

**BILLING CODE 4312–50–S**

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## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion: Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA. The human remains and associated funerary objects were removed from Tehama County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

An assessment of documents associated with the human remains and associated funerary objects was made by professional staff of the Phoebe A. Hearst Museum of Anthropology in consultation with representatives of the Grindstone Indian Rancheria of Wintun-Wailaki Indians of California; Paskenta Band of Nomlaki Indians of California; and Round Valley Indian Tribes of the Round Valley Reservation, California.

Between 1953 and 1955, human remains representing a minimum of 100 individuals were removed from CA-Teh–58, a site located on the northwest bank of the Sacramento River approximately 2.25 miles east of Red Bluff, Tehama County, CA. The human remains and associated funerary objects were accessioned into the museum in 1953 and 1955 (Accessions UCAS–246 and UCAS–337). No known individuals were identified. The 2,912 associated funerary objects are 18 animal bone and fragments, 6 abalone fragments, 8 abraders, 19 acorns, 1 arrow point, 1 arrow shaft straightener, 7 awls, 1 bar,

1,806 beads, 1 bird burial, 5 blades, 10 can fragments, 9 choppers, 2 claws, 6 concretions, 1 piece of cordage, 2 cores, 1 cup, 1 cylinder, 9 dices, 1 disc, 5 drills, 2 fishhooks, 187 obsidian and chert flakes, 1 iron guide, 5 knives, 2 manos, the remains of 1 ''meal,'' 1 metate, 1 iron nail, 14 flint and obsidian nodules, 5 pebbles, 1 pencil, 11 pendants, 27 pestles, 7 lumps of pigment, 1 pipe, 62 points, 41 projectile points, 11 scrapers, 568 shells and shell fragments (approximate count), 8 shoe fragments, 12 shroud fragments, 1 skirt, 9 slabs, 6 stones, 3 animal teeth, 4 twine fragments, and 1 whistle.

Site CA-Teh–58 is a burial mound, associated with at least one permanent village site. The University of California Archaeological Survey started its excavation in 1953. Although, in 1948, the land was privately owned, the National Park Service provided the permit and the project funding under the River Basin Survey program. The historic age of the site is confirmed by the presence of glass beads and other metallic objects that are associated with some of the burials. Site CA-Teh–58 lies entirely within the Nomlaki aboriginal territory whose northern border extends to Cottonwood Creek almost 10 miles to the north of the site. Descendants of the Nomlaki are members of the Grindstone Indian Rancheria of Wintun-Wailaki Indians of California; Paskenta Band of Nomlaki Indians of California; and Round Valley Indian Tribes of the Round Valley Reservation, California.

Officials of the Phoebe A. Hearst Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 100 individuals of Native American ancestry. Officials of the Phoebe A. Hearst Museum of Anthropology have also determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 2,912 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Phoebe A. Hearst Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Grindstone Indian Rancheria of Wintun-Wailaki Indians of California; Paskenta Band of Nomlaki Indians of California; and Round Valley Indian Tribes of the Round Valley Reservation, California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Judd King, Interim Director of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA 94720, telephone (510) 642–3682, before September 29, 2008. Repatriation of the human remains and associated funerary objects to the Grindstone Indian Rancheria of Wintun-Wailaki Indians of California; Paskenta Band of Nomlaki Indians of California; and Round Valley Indian Tribes of the Round Valley Reservation, California may proceed after that date if no additional claimants come forward.

The Phoebe A. Hearst Museum of Anthropology is responsible for notifying the Grindstone Indian Rancheria of Wintun-Wailaki Indians of California; Paskenta Band of Nomlaki Indians of California; and Round Valley Indian Tribes of the Round Valley Reservation, California that this notice has been published.

Dated: July 28, 2008.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. E8–20095 Filed 8–28–08; 8:45 am]

**BILLING CODE 4312–50–S**

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## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion: St. Lawrence University, Department of Anthropology, Canton, NY

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of St. Lawrence University, Department of Anthropology, Canton, NY. The human remains were removed from St. Lawrence County, NY.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal Agency that has control of the Native American human remain. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remain was made by professional staff of the Department of Anthropology at St. Lawrence University in consultation with representatives of the Saint Regis Mohawk Tribe, New York (formerly the St. Regis Band of Mohawk Indians of New York).

At an unknown date, but probably either in 1928 or 1948, a human remain representing a minimum of one individual was removed from private land near Gouverneur in St. Lawrence County, NY, by John Frank Murray. Mr. Murray kept the human remain safely stored in his basement until the 1980s. During the early 1980's (1983 at the latest), Mr. Murray turned over the human remain to Lauren (Foster) French, who was a student at St. Lawrence University. Ms. French then turned the human remain over to Dr. John Barthelme of the Department Anthropology at St. Lawrence University. On January 16, 2008, Dr. Richard A. Gonzalez took custody of the human remain. No known individual was identified. No associated funerary objects are present.

The human remain is the cranium of a single individual. After conducting morphological analysis on the cranium, Dr. Gonzalez determined that the cranium belonged to an individual of Native American descent, as the craniofacial features are consistent with features present in crania of individuals of Native American descent. Specifically, the cranium exhibits artificial remodeling of the occipital region of the cranium, which is consistent with cranial alterations resulting from cradle-boarding. Cradle-boarding was commonly practiced among the Iroquois.

The region of Gouverneur has been constantly occupied by Native Americans from 10,000 BP up to the historic period and beyond. The St. Lawrence River and its tributaries were continually used as part of Native American hunting and fishing grounds. During the French and Indian War, Native Americans who lived in the Oswegatchie River region (Oswegatchie is a tributary of the St. Lawrence River) were dislocated as a result of the war. Native American refugees were forced to settle at St. Regis, NY. Consultation with tribal representatives of the Saint Regis Mohawk Tribe, New York provided additional lines of evidence.

Through ongoing consultation with Native American groups and Lauren French, examination of the human remains, and review of the available literature, officials of St. Lawrence University have determined that the human remain is Native American and most likely culturally affiliated with the Saint Regis Mohawk Tribe, New York.

Officials of the Department of Anthropology at St. Lawrence University have determined that,

pursuant to 25 U.S.C. 3001 (9–10), the human remain described above represents the physical remain of one individual of Native American ancestry. Officials of the Department of Anthropology at St. Lawrence University have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remain and the Saint Regis Mohawk Tribe, New York.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remain should contact Dr. Richard A. Gonzalez, Department of Anthropology, St. Lawrence University, Canton, NY 13617, telephone (315) 229–5745, before September 29, 2008. Repatriation of the human remain to the Saint Regis Mohawk Tribe, New York may proceed after that date if no additional claimants come forward.

St. Lawrence University is responsible for notifying the Saint Regis Mohawk Tribe, New York that this notice has been published.

Dated: July 31, 2008.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. E8–20111 Filed 8–28–08; 8:45 am]

**BILLING CODE 4312–50–S**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion: University of Wyoming, Anthropology Department, Human Remains Repository, Laramie, WY

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession and control of the University of Wyoming Anthropology Department Human Remains Repository in Laramie, WY. The human remains and associated funerary objects were removed from Goshen County, WY.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by University of Wyoming Anthropology Department Human Remains Repository professional staff in consultation with representatives of the Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota.

In 1977, human remains representing a minimum of two individuals were removed from near the old Bordeaux Trading Post in Goshen County, WY, by personnel from Fort Laramie, Goshen County Sheriff's Office, and Goshen County Coroner, after the burial location had been disturbed by earth leveling activities associated with farming. No known individuals were identified. The four associated funerary objects are one set of glass trade beads, one brass button, one set of cloth fragments, and one set of wooden coffin fragments.

The remains are a partial skeleton of a female of probable mixed Native American/Euroamerican parentage. Some features on the cranium and mandible suggest that the individual has both Euroamerican and Native American aspects in her parentage. The cranial cap is partially mummified and a stripe of red ocher or vermillion had been painted down the center of the top of the head, approximately at the part of the hair. The woman was apparently pregnant or had just delivered a child at the time of her death. The child interred with her is also likely of mixed parentage and was likely a newborn infant.

Historic background research and ethnographic inquiries indicates that the human remains are most likely related to the Sioux groups that were known to have intermarried with the Bordeaux family and their employees at the old Bordeaux Trading Post a few miles below Fort Laramie near the North Platte River. The Bordeaux name is still carried by members of the Rosebud Sioux Tribe and tribal representatives identified specific bands of the Rosebud Sioux Tribe that had married Bordeaux Trading Post employees. Tribal evidence presented for cultural affiliation is based on review of records afforded to the tribe, contact with the Bordeaux family, and review of the information from the Human Remains Repository.

Officials of the University of Wyoming, Anthropology Department, Human Remains Repository have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of two individuals of Native American ancestry. Officials of the University of Wyoming, Anthropology Department, Human Remains Repository also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the four objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University of Wyoming, Anthropology Department, Human Remains Repository have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Rick L. Weathermon, NAGPRA Contact at the University of Wyoming Department 3431, Anthropology, 1000 E. University Ave., Laramie, WY 82071, telephone (307) 766–5136, before September 29, 2008. Repatriation of the human remains and associated funerary objects to the Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota may proceed after that date if no additional claimants come forward.

University of Wyoming Anthropology Department Human Remains Repository is responsible for notifying the Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota that this notice has been published.

Dated: July 29, 2008.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. E8–20090 Filed 8–28–08; 8:45 am]

**BILLING CODE 4312–50–S**

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### San Luis Low Point Improvement Project, California

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of intent (NOI) to prepare an environmental impact statement/ environmental impact report (EIS/EIR) and notice of public scoping meetings.

**SUMMARY:** Pursuant to the National Environmental Policy Act and the California Environmental Quality Act, the Bureau of Reclamation (Reclamation) and the Santa Clara Valley Water District, in coordination with the San Luis and Delta Mendota

Water Authority, intend to prepare an EIS/EIR for the San Luis Low Point Improvement Project (Low Point Project). Reclamation is the lead Federal agency and Santa Clara Valley Water District is the lead State agency for preparation of the EIS/EIR.

The Low Point Project is designed to address water supply reliability issues in San Luis Reservoir associated with conditions occurring in summer months when water levels are low. During this time, reservoir-wide growth of algae makes the water unsuitable for certain agricultural and municipal and industrial users in the San Felipe Division with existing treatment facilities (also known as the ''low point issue'').

**DATES:** A series of public scoping meetings will be held to solicit public input on alternatives, concerns, and issues to be addressed in the EIS/EIR. The meeting dates are as follows:

- September 10, 2008, 4:30 p.m. to 7:45 p.m., San Jose, CA.
- September 11, 2008, 10 a.m. to 12 p.m., Sacramento, CA.
- September 11, 2008, 5 p.m. to 9 p.m., Los Banos, CA.

Written comments must be received by October 28, 2008.

**ADDRESSES:** The public scoping meeting locations are:

- San Jose at the Rose Garden Public Library, 1580 Naglee Avenue.
- Sacramento at the Federal Building, 2800 Cottage Way, Cafeteria Conference Rooms C–1001 and C–1002.
- Los Banos at the Miller and Lux Community Center, 830 Sixth Street.

Written comments on the scope of the EIS/EIR should be sent to Ms. Lynnette Wirth, Bureau of Reclamation, 2800 Cottage Way, Public Affairs, Sacramento, CA 95825, e-mailed to *lwirth@mp.usbr.gov,* or faxed to 916–978–5114.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sharon McHale, Reclamation Project Manager, at the above address, 916–978–5086 (TDD 916–978–5608), or via e-mail at: *smchale@mp.usbr.gov;* or Ms. Tracy Ligon, Santa Clara Valley Water District, 5750 Almaden Expressway, San Jose, CA 95118–3686, at 408–265–2600 x2569 or via e-mail at: *tligon@valleywater.org.*

**SUPPLEMENTARY INFORMATION:** San Luis Reservoir is a jointly shared off-stream storage facility providing Reclamation and the State of California the ability to store water during wet seasons and deliver it during dry seasons. Use of the reservoir helps to maximize Central Valley Project (CVP) and State Water Project supplies and contract deliveries. Any constraint in the release of water from San Luis Reservoir, including maintaining water levels to avoid the low point issue, could limit water supplies.

The Low Point Project is designed to address water supply reliability issues in San Luis Reservoir associated with the low point issue. The low point issue arises when water levels fall below 300 thousand acre-feet (TAF), creating a water quality restriction (algae blooms) that has the potential to interrupt a portion of the San Felipe Division's water supply. The low point issue may affect the ability of San Luis Reservoir to provide water supply reliability and deliveries to south-of-Delta contractors.

Conditions at San Luis Reservoir promote the growth of reservoir-wide algae during the summer months, when the reservoir reaches the lower water surface elevations (approximately 300 TAF). Algae blooms vary in size in different years, but generally reach diversion facilities when the reservoir has 300 TAF of water remaining in storage. The water quality within the algal blooms is not suitable for agricultural water users with drip irrigation systems in San Benito County or for municipal and industrial water users relying on existing water treatment facilities in Santa Clara County. Reaching 300 TAF creates a risk for the San Felipe Division contractors because the San Luis Reservoir is the only CVP water source point that they can access.

The project location is focused around San Luis Reservoir in Merced County. The project also includes the service areas of the CVP San Felipe Division in Santa Clara and San Benito Counties, and other CVP contractors within the San Luis and Delta Mendota Water Authority in the western San Joaquin Valley.

## Background

One of the options identified in the 2000 CALFED Programmatic Record of Decision was a bypass canal that would connect the San Felipe Division to water delivered by the Sacramento-San Joaquin River Delta pumping facilities, to increase use of water in San Luis Reservoir by up to 200 TAF.

Reclamation issued a Notice of Intent (NOI) for a similar project on July 17, 2002. The participating agencies conducted scoping meetings, and the results of those meetings have been incorporated into this project. After publishing the initial NOI, the project focus has broadened, which has resulted in new planning objectives. The agencies have decided to re-issue the NOI and conduct new scoping meetings because of the length of time that has passed and the change in project objectives.

## Objectives

The overall objective of the Low Point Project is to optimize the water supply benefit of San Luis Reservoir while reducing additional risks to water users by:

- Avoiding supply interruptions when water is needed by increasing the certainty of meeting the requested delivery schedule throughout the year to south-of-Delta contractors dependent on San Luis Reservoir;
- Increasing the reliability and quantity of yearly allocations to south-of-Delta contractors dependent on San Luis Reservoir; and
- Announcing higher allocations earlier in the season to south-of-Delta contractors dependent on San Luis Reservoir without sacrificing accuracy of the allocation forecasts.

The Low Point Project may also provide opportunities for ecosystem restoration.

## Alternatives

Initial alternatives fall into seven general categories:

- *Institutional:* Non-structural measures, including agreements and exchanges that would reduce the likelihood of San Luis Reservoir reaching its functional low point or would provide alternate supplies for the San Felipe Division during times when the functional low point is reached.
- *Source Water Quality Control:* Improvements to San Luis Reservoir water quality that would reduce water supply interruptions for the San Felipe Division while continuing supplies for the rest of the San Luis and Delta-Mendota users.
- *Water Treatment:* New or enhanced raw water treatment capabilities using dissolved air flotation that could treat San Luis Reservoir water and reduce or eliminate interrupted deliveries when algae blooms are in the vicinity of the Pacheco Intake.
- *Conveyance:* Facilities that would allow San Felipe Division CVP supplies to bypass the San Luis Reservoir altogether or change the location of the San Felipe Division's intake so that low water levels and algae are not a problem.
- *Storage:* Facilities that would create additional storage, either on the San Felipe side of San Luis Reservoir or within the Central Valley, to provide an alternate water supply.
- *Alternate Water Supplies:* Measures that would provide a new source of water to users in the San Felipe

Division, reducing their demands on San Luis Reservoir water supplies.

• *Combination Alternative:* Measures that work best in combination, augmenting efficient use of existing available water supplies and facilities to resolve the low point problem. The Alternative Water Supplies concept incorporates multiple strategies, such as source shifting, new supply development, additional treatment technology, reoperation, and operational agreements, which build upon one another either incrementally or in total, to achieve water supply reliability, water quality, and system flexibility project objectives and opportunities.

**Special Assistance for Public Scoping Meetings**

If special assistance is required at the public hearings, please contact Ms. Lynnette Wirth at 916–978–5100, TDD 916–978–5608, or via e-mail at *lwirth@mp.usbr.gov.* Please notify Ms. Wirth as far in advance as possible to enable Reclamation to secure the needed services. If a request cannot be honored, the requestor will be notified. A telephone device for the hearing impaired (TDD) is available at 916–978–5608.

**Public Disclosure**

Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: August 8, 2008.

**Susan M. Fry,**

*Regional Environmental Officer, Mid-Pacific Region.*

[FR Doc. E8–20104 Filed 8–28–08; 8:45 am]

BILLING CODE 4310–MN–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### Windy Gap Firming Project; Colorado-Big Thompson Project, Grand and Larimer Counties, CO

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of Availability of the Draft Environmental Impact Statement (Draft EIS) and Announcement of Public Hearings.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act, the Bureau of Reclamation (Reclamation) has completed the Windy Gap Firming Project Draft EIS. It is now available for public review and comment. Two public hearings are scheduled during the comment period. The Draft EIS describes and discloses the estimated environmental effects of five alternatives, including a no action alternative and four action alternatives that accomplish the purpose and need for the project.

The U.S. Army Corps of Engineers (Corps), the Western Area Power Administration (Western), and the Board of County Commissioners, Grand County, Colorado (Grand County) are cooperating agencies that are providing assistance in the preparation of the Environmental Impact Statement (EIS) under the National Environmental Policy Act.

**DATES:** A 60-day public comment period begins with the publication of this notice. Written comments on the Draft ES are due by October 28, 2008 and should be submitted to Reclamation listed in the **ADDRESSES** section. Public hearings will be held during October 2008 in Colorado. See the **SUPPLEMENTARY INFORMATION** section for dates of the public hearings.

**ADDRESSES:** Comments on the Draft EIS should be sent to the attention of Will Tully, Bureau of Reclamation, 11056 West County Rd. 18E, Loveland, CO 80537. Comments may also be submitted in writing by fax, e-mail, or at the public hearings. Send faxes to the attention of Will Tully at 970–663–3212. Send e-mail to *wtully@gp.usbr.gov* with Windy Gap Draft EIS Comment as the subject line.

Copies of the Draft EIS and related documents are available online from Reclamation's Web site at *http://www.usbr.gov/gp/nepa/quarterly.cfm.* Paper copies of the Draft EIS may be obtained by calling Kara Lamb at 970–962–4326. Refer to the **SUPPLEMENTARY INFORMATION** section for locations of libraries at which copies of the Draft EIS are available for review.

**FOR FURTHER INFORMATION CONTACT:** Kara Lamb at 970–962–4326 or *klamb@gp.usbr.gov* or Will Tully at 970–962–4368 or *wtully@gp.usbr.gov.* Mail requests should be addressed to the Bureau of Reclamation at the address indicated in the **ADDRESSES** section.

**SUPPLEMENTARY INFORMATION:** Reclamation will hold public hearings, preceded by an open house, to receive oral and written comments on the Draft EIS at the following times and places:

• October 7, 2008, open house at 6 p.m., public hearing at 7 p.m., McKee Conference Center, 2000 Boise Avenue, Loveland, CO 80538, (ph. 970–669–4640).

• October 9, 2008, open house at 5 p.m., public hearing at 7 p.m., Inn at Silver Creek, 62927 U.S. Highway 40, Granby, CO 80446, (ph. 970–887–4080).

Public Hearing Process Information: Each public hearing will be preceded by an open house hosted by Reclamation to display project information and allow for questions. The meeting facilities are physically accessible to people with disabilities. People needing special assistance to attend and participate in the public hearings should contact Ms. Kara Lamb at 970–962–4326 as soon as possible. To allow sufficient time to process special requests, please call no later than one week before the public hearing of interest.

The purpose of the public hearings is to provide the public with an opportunity to comment on information presented in the Draft EIS. Oral comments may be limited to a specified period of time if deemed necessary by Reclamation to complete the hearing in an appropriate period of time. Written comments will also be accepted at the hearings. Information regarding this proposed action is available in alternative formats upon request.

Locations where the Draft EIS may be reviewed:

• Eastern Colorado Area Office, 11056 W. County Rd. 18E, Loveland, CO 80537 970–962–4410.

• Corps of Engineers, Chatfield Reservoir Office, 9307 South Wadsworth Blvd., Littleton, CO 80128.

• Morgan Library, Colorado State University, 501 University Avenue Fort Collins, CO 80523–1019.

• Berthoud, Berthoud Public Library, 236 Welch Avenue.

• Broomfield, Mamie Eisenhower Public Library, 3 Community Park Road.

• Ft. Collins, Fort Collins Public Library, 201 Peterson Street.

• Ft. Lupton, Ft. Lupton Public Library, 425 South Denver Avenue.

• Granby, Granby Branch Library, 13 East Jasper Avenue.

• Grand Lake, Juniper Library, 316 Garfield Street.

• Greeley, Centennial Park Branch, Weld Library District, 2227 23rd Avenue.

• Greeley, Fart Branch, Weld Library District, 1939 61st Avenue.

• Greeley, Lincoln Park Branch, Weld Library District, 919 7th Street.

• Hot Sulphur Springs, Hot Sulphur Springs Branch Library, 105 Moffat.

• Kremmling, Kremmling Branch Library, 300 South 8th Street.

• Longmont, Longmont Public Library, 409 4th Avenue.
• Louisville, Louisville Public Library, 950 Spruce St.
• Loveland, Loveland Public Library, 300 North Adams Avenue.
• Lyons, Lyons Depot Library, 5th and Broadway.

*Background:* The Bureau of Reclamation (Reclamation) has received a proposal from the Municipal Sub-district, Northern Colorado Water Conservancy District, acting by and through the Windy Gap Firming Project Water Activity Enterprise (Sub-district or Applicant) to improve the firm yield of the existing Windy Gap Project by constructing the Windy Gap Firming Project (WGFP). Firm yield is defined by the Sub-district as the yield that can be provided by the project each year of the study period without shortages. The proposal includes a connection of WGFP facilities to the Colorado-Big Thompson Project (C–BT) and construction of a new dam and reservoir dedicated to the storage of Windy Gap and C–BT water, and under the Proposed Action (Alternative 2), for the storage of C–BT water in the proposed 90,000 acre-foot Chimney Hollow Reservoir under the concept of prepositioning. The major Federal actions triggering the need for this EIS are that Reclamation must authorize a connection to C–BT facilities and approve any required amendment or change to the Amendatory Carriage contract (Contract No. 407–70–W0107) dated March 1, 1990; the Corps of Engineers must issue a 404 permit if a dam is constructed that requires placement of fill within a water of the United States; and the Western Area Power Administration must relocate a portion of a utility line for two of the alternatives being considered.

*Purpose and Need for the Action:* When constructed in the early 1980s, it was anticipated by the Sub-district and Reclamation that the Windy Gap Project would divert a long-term annual average of 56,000 acre-feet per year from the Colorado River. In 1981, Reclamation completed an EIS on approving the use of C–BT facilities to transport Windy Gap diversions to eastern slope participants. Reclamation subsequently entered into contracts for the storage and transport of Windy Gap water through the C–BT system. In practice, the project has been unable to provide the expected yield due to Windy Gap's junior water right and to provisions in the current agreements that protect the yield of the C–BT system. Current agreements stipulate that whenever Windy Gap water remains in the C–BT system, any water required to be spilled from Granby Reservoir is considered to be Windy Gap water. When Granby Reservoir is full or anticipated to spill, space is not available for Windy Gap water. The Sub-district estimates the firm yield of the Windy Gap Project is zero because the project is unable to deliver water to the participants in all years. The Windy Gap Firming Project is seeking to provide 30,000 acre-feet of firm yield from the Windy Gap Project that will be available to the participants in all years. This would result in a long term average annual gross diversion of about 46,000 acre-feet per year compared to the 13,829 acre-feet of average annual diversions that have been made by the Windy Gap Project from 1985 to 2007 and the originally anticipated 56,000 acre-feet per year as analyzed in the 1981 EIS. All of the alternatives except the No Action alternative require a connection to C–BT Project facilities and all except the No Action alternative require a Section 404 permit from the Corps of Engineers. Two of the four action alternatives require relocation of a power line by the Western Area Power Administration. Grand County is a cooperating agency due to its permitting authority under the County's 1041 regulations. Alternatives: The Draft EIS discloses the anticipated effects of four action alternatives and the No Action alternative. The alternatives evaluated in the EIS include:

• Alternative 1 (No Action)—Continuation of existing operations and agreements between Reclamation and the Sub-district for conveyance of Windy Gap water through C–BT facilities and enlargement of Longmont's Ralph Price Reservoir by approximately 13,000 acre-feet.
• Alternative 2 (Proposed Action)—Chimney Hollow Reservoir (90,000 AF) with prepositioning.
• Alternative 3—Chimney Hollow Reservoir (70,000 AF) and Jasper East Reservoir (20,000 AF).
• Alternative 4—Chimney Hollow Reservoir (70,000 AF) and Rockwell/Mueller Creek Reservoir (20,000 AF).
• Alternative 5—Dry Creek Reservoir (60,000 AF) and Rockwell/Mueller Creek Reservoir (30,000 AF).

The No Action alternative is defined as what would happen if Reclamation declines to allow the proposed connection to C–BT facilities. It includes continuation of the existing Windy Gap agreement between Reclamation and the Sub-district and other predictable actions the participants would take individually to firm their Windy Gap units. Public Disclosure Statement: Before including your name, address, telephone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: August 22, 2008.

**Michael J. Ryan,**

*Regional Director, Great Plains Region.*

[FR Doc. E8–19829 Filed 8–28–08; 8:45 am]

BILLING CODE 4310–MN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–62,515]**

### Drive Sol Global Steering, Inc., Steering Division, Formerly Known as Timken U.S. Corporation, Including On-Site Leased Workers of Kelly Services, Inc., Watertown, CT; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on February 5, 2008, applicable to workers of Drive Sol Global Steering, Inc., Steering Division, Watertown, Connecticut. The notice was published in the **Federal Register** on February 22, 2008 (73 FR 9835). The certification was amended on March 10, 2008 to reflect the former employer's name. The notice was published in the **Federal Register** on March 17, 2008 (73 FR 14271).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of steering mechanical shafts.

New information shows that leased workers of Kelly Services, Inc. were employed on-site at the Watertown, Connecticut location of Drive Sol Global Steering, Inc., Steering Division, formerly known as Timken U.S. Corporation. The Department has determined that the Kelly Services, Inc. workers were sufficiently under the

control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include leased workers of Kelly Services, Inc. working on-site at the Watertown, Connecticut location of the subject firm

The intent of the Department's certification is to include all workers employed at Drive Sol Global Steering, Inc., Steering Division, formerly known as Timken U.S. Corporation, who were adversely affect by increased imports of steering mechanical shafts.

The amended notice applicable to TA–W–62,515 is hereby issued as follows:

All workers of Drive Sol Global Steering, Inc., Steering Division, formerly known as Timken U.S. Corporation, including on-site leased workers of Kelly Services, Inc., Watertown, Connecticut, who became totally or partially separated from employment on or after November 29, 2006, through February 5, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 20th day of August 2008.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E8–20042 Filed 8–28–08; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

## Employment and Training Administration

**[TA–W–63,520]**

## American Dynamics, Sensormatic Electronics, a Subsidiary of Tyco International, Access Control and Video Systems Division, San Diego, CA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on July 14, 2008, applicable to workers of American Dynamics, Access Control and Video Systems Division, Subsidiary of Sensormatic Electronics, San Diego, California. The notice was published in the **Federal Register** on July 30, 2008 (73 FR 44284).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produce computer software coding for digital video management systems.

The State reports that some of the workers wages are reported to the Unemployment Insurance (UI) tax account under the parent company's name, Tyco International. Further review of the file shows that the name of the firm was not correctly identified. American Dynamics is not a subsidiary of Sensormatic Electronics. The legal name for American Dynamics is Sensormatic Electronics which is a subsidiary of Tyco International.

Based on the findings above the Department is amending the certification to correctly identify the name of the subject firm and include those workers whose UI wages are reported under Tyco International.

The amended notice applicable to TA–W–63,520 is hereby issued as follows:

All workers of American Dynamics, Sensormatic Electronics, a subsidiary of Tyco International, Access Control and Video Systems Division, San Diego, California, who became totally or partially separated from employment on or after June 6, 2007 through July 14, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 15th day of August 2008.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E8–20043 Filed 8–28–08; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

## Employment and Training Administration

**[TA–W–63,691]**

## Newpage Corporation, Niagara Mill, Including On-Site Leased Workers From PSI, Naico, Gunville Trucking and Advanced Service Providers, Niagara, WI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on July 31, 2008, applicable to workers of NewPage Corporation, Niagara Mill, including on-site leased workers from PSI, Naico and Gunville Trucking, Niagara, Wisconsin. The notice was published in the **Federal Register** on August 12, 2008 (73 FR 46923).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of coated mechanical printing paper.

New information shows that a leased worker from Advanced Service Providers was employed on-site at the Niagara, Wisconsin location of NewPage Corporation, Niagara Mill. The Department has determined that this worker was sufficiently under the control of NewPage Corporation, Niagara Mill to be considered a leased worker.

Based on these findings, the Department is amending this certification to include a leased worker from Advanced Service Providers working on-site at the Niagara, Wisconsin location of the subject firm.

The intent of the Department's certification is to include all workers employed at NewPage Corporation, Niagara Mill, Niagara, Wisconsin who were adversely affected by increased imports of coated mechanical printing paper.

The amended notice applicable to TA–W–63,691 is hereby issued as follows:

All workers of NewPage Corporation, Niagara Mill, including on-site leased workers from PSI, Naico, Gunville Trucking, and Advanced Service Providers, Niagara, Wisconsin, who became totally or partially separated from employment on or after July 11, 2007, through July 31, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 20th day of August 2008.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E8–20045 Filed 8–28–08; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–62,308]**

### Robertshaw Controls Company, a Division of Invensys Controls, Including On-Site Leased Workers From VOLT Services, Long Beach, CA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on November 7, 2007, applicable to workers of Robertshaw Controls Company, a division of Invensys Controls, Long Beach, California. The notice was published in the **Federal Register** on November 21, 2007 (72 FR 65607).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of gas valve components.

New information shows that leased workers of Volt Services were employed on-site at the Long Beach, California location of Robertshaw Controls Company, a division of Invensys Controls.

The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include leased workers of Volt Services working on-site at the Long Beach, California location of the subject firm.

The intent of the Department's certification is to include all workers employed at Robertshaw Controls Company, a division of Invensys Controls who were adversely affected by a shift in production of gas valve components to Mexico.

The amended notice applicable to TA–W–62,308 is hereby issued as follows:

All workers of Robertshaw Controls Company, a division of Invensys Controls, including on-site leased workers from Volt Services, Long Beach, California, who became totally or partially separated from employment on or after October 2, 2006, through November 9, 2009, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 20th day of August 2008.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E8–20041 Filed 8–28–08; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

### TA–W–61,004, the Seydel Companies, Seydel-Woolley & Co., Inc., Division, Pendergrass, GA; Including Employees of the Seydel Companies, Seydel-Woolley Co., Inc., Division; Pendergrass, GA; Working Out of Various Other Locations: TA–W–61,004A, Portland, ME; TA–W–61,004B, Greenville, SC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on March 14, 2007, applicable to workers of The Seydel Companies, Seydel-Woolley & Co., Inc., Division, Pendergrass, Georgia. The notice was published in the **Federal Register** on March 30, 2007 (72 FR 15168).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers produced textile chemicals.

New information shows that worker separations have occurred involving employees (Mr. Martin Folan and Mr. Dan Bull) in support of the and under the control of the Pendergrass, Georgia facility of The Seydel Companies, Seydel-Woolley & Co., Inc., Division working out of Portland, Maine and Greenville, South Carolina.

Based on these findings, the Department is amending this certification to include employees of the of the Pendergrass, Georgia location of the subject firm working out of Portland, Maine and Greenville, South Carolina.

The intent of the Department's certification is to include all workers of The Seydel Companies, Seydel-Woolley & Co., Inc., Division who were adversely affected by a shift in production textile chemicals to China.

The amended notice applicable to TA–W–61,004 is hereby issued as follows:

All workers of The Seydel Companies, Seydel-Woolley & Co., Inc., Division, Pendergrass, Georgia (TA–W–61,004), including employees in support of The Seydel Company, Seydel-Woolley & Co., Inc., Division, Pendergrass, Georgia working out of Portland, Maine (TA–W–61,004A) and Greenville, South Carolina (TA–W–61,004B), who became totally or partially separated from employment on or after February 12, 2006, through March 14, 2009, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 18th day of August 2008.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E8–20039 Filed 8–28–08; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–61,296]**

### Valeo Engine Cooling: Currently Known as Titanx Engine Cooling, Inc.; Jamestown, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on May 4, 2007, applicable to workers of Valeo Engine Cooling, Jamestown, New York. The notice was published in the **Federal Register** on May 17, 2007 (72 FR 27855).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of engine cooling products for heavy trucks.

New information shows that on May 31, 2008, EQT purchased Valeo Engine Cooling, Jamestown, New York and is currently known as TitanX Engine Cooling, Inc., Jamestown, New York. Workers wages at the subject firm are being reported under the

Unemployment Insurance (UI) tax account for TitanX Engine Cooling, Inc.

Accordingly, the Department is amending this certification to include workers of the subject firm whose UI wages are reported under the successor firm, Valeo Engine Cooling, currently known as TitanX Engine Cooling, Inc., Jamestown New York.

The amended notice applicable to TA–W–61,296 is hereby issued as follows:

All workers of Valeo Engine Cooling, currently known as TitanX Engine Cooling, Inc., Jamestown, New York, who became totally or partially separated from employment on or after April 11, 2006, through May 4, 2009, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 18th day of August 2008.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E8–20040 Filed 8–28–08; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of *August 11 through August 15, 2008.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

#### Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

*None.*

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

*None.*

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

*None.*

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

*None.*

#### Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each

determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

*TA–W–63,629; Gleason Corporation, Fort Madison, IA: June 26, 2007.*

*TA–W–63,772; Rogue Valley Door, Leased Workers from Personnel Source, Grants Pass, OR: July 29, 2007.*

*TA–W–63,866; General Electric Company, Consumer and Electrical Division, Plainville, CT: August 13, 2007.*

*TA–W–63,469; Lapeer Metal Stamping Companies, Lapeer Division, Stamping Plant and Assembly Plant, Lapeer MI: June 2, 2007.*

*TA–W–63,578; Gibbs Die Casting, On-Site Leased Workers of Diversco PM, Henderson, KY: June 20, 2007.*

*TA–W–63,607; Tecnicor International, Inc., Hingham, MA: June 17, 2007.*

*TA–W–63,655; Bonnie Sports, Inc., New York, NY: June 30, 2007.*

*TA–W–63,669; Foster Veneer–Weyerhaeuser, Ilevel Division, Sweet Home, OR: July 8, 2007.*

*TA–W–63,778; Chuck Roast Equipment, Inc., Conway, NH: July 31, 2007.*

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

*TA–W–63,494; Master Industries, Inc., Ansonia, OH: June 5, 2007.*

*TA–W–63,673; Acme Electric, Lumberton Operations, A Division of Actuant Corporation, Leased Workers Mega, Lumberton, NC: July 11, 2007.*

*TA–W–63,742; FCI USA, Inc., Novi, MI: July 21, 2007.*

*TA–W–63,790; Fish Harder Companies, Leased Worker From Valerie Lazor's Temporary, Indiana, PA: July 31, 2007.*

*TA–W–63,842; Schlegel Corporation, Chester, SC: August 8, 2007.*

*TA–W–63,656; Revlon Consumer Products Corporation, Implements Division, Irvington, NJ: June 15, 2007.*

*TA–W–63,760; American Racing Equipment, Inc., Rancho Dominguez, CA: March 3, 2008.*

*TA–W–63,809; Panasonic Motor Company, A Division of Panasonic Corporation of North America, Berea, KY: August 1, 2007.*

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

*TA–W–63,696; Johnson Controls Injection Molding, LLC, Wages Paid under Plastech Engineered Products, Clarkston, MI: July 15, 2007.*

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

*None.*

**Negative Determinations for Alternative Trade Adjustment Assistance**

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. The firm does not have a significant number of workers 50 years of age or older.

*None.*

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

*None.*

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

*None.*

**Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance**

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

*None.*

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

*None.*

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

*TA–W–63,333; LDI Composites Company, Diversi-Plast Products Division, Green Bay, WI.*

*TA–W–63,478; Aleris Rolled Products, A Subsidiary of Commonwealth Aluminum Concast, Bedford, OH.*

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

*TA–W–63,823; Eva Airways Corporation, Los Angeles Airport Office, El Segundo, CA.*

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

*None.*

I hereby certify that the aforementioned determinations were issued during the period of *August 11 through August 15, 2008.* Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: August 21, 2008.

**Erin Fitzgerald,**

*Director, Division of Trade Adjustment Assistance.*

[FR Doc. E8–20036 Filed 8–28–08; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or

threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than September 8, 2008.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than September 8, 2008.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 20th day of August 2008.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

TAA PETITIONS INSTITUTED BETWEEN 8/11/08 AND 8/15/08

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 63841 | Great Lakes Industry, Inc. (Comp) | Jackson, MI | 08/11/08 | 08/08/08 |
| 63842 | Schlegel Corporation (Comp) | Chester, SC | 08/11/08 | 08/08/08 |
| 63843 | Ace Precision Castings, LLC (State) | Marshalltown, IA | 08/11/08 | 08/08/08 |
| 63844 | Kenro, Inc. (Wkrs) | Fredonia, WI | 08/11/08 | 08/08/08 |
| 63845 | Monster Cable (Wkrs) | Brisbane, CA | 08/11/08 | 08/08/08 |
| 63846 | Kennametal, Inc. (Comp) | Latrobe, PA | 08/11/08 | 08/07/08 |
| 63847 | Ramp Management, LLC (Wkrs) | Fenton, MO | 08/11/08 | 08/07/08 |
| 63848 | Kansas City Service Center (Wkrs) | Lee's Summit, MO | 08/12/08 | 08/05/08 |
| 63849 | Henredon Furniture (Wkrs) | High Point, NC | 08/12/08 | 08/05/08 |
| 63850 | Conn-Selmer, Inc. (Wkrs) | Monroe, NC | 08/12/08 | 08/11/08 |
| 63851 | Fechheimer-Martin Manufacturing (Comp) | Martin, TN | 08/12/08 | 08/11/08 |
| 63852 | J.J. Digh Machine Co., Inc. (Comp) | Dallas, NC | 08/12/08 | 08/11/08 |
| 63853 | Red Shield Environmental (Union) | Old Town, ME | 08/12/08 | 07/28/08 |
| 63854 | Cassens Transport, Inc. (Wkrs) | Fenton, MO | 08/12/08 | 08/07/08 |
| 63855 | Dart Container Corporation of California (Wkrs) | Corona, CA | 08/12/08 | 08/01/08 |
| 63856 | Starkey Laboratories, Inc. (State) | Eden Praire, MN | 08/12/08 | 08/11/08 |
| 63857 | Flex Steel Industries (USW) | Lancaster, PA | 08/12/08 | 08/04/08 |
| 63858 | Ascentron (Rep) | White City, OR | 08/12/08 | 08/11/08 |
| 63859 | Henkel Corporation (Wkrs) | Olean, NY | 08/12/08 | 07/15/08 |
| 63860 | K–Rain Manufacturing (Comp) | Riviera Beach, FL | 08/13/08 | 08/07/08 |
| 63861 | Superior Metal Products, Inc./American Trim (Comp) | Cullman, AL | 08/13/08 | 08/08/08 |
| 63862 | SPX Corporation (Comp) | Cleveland, OH | 08/13/08 | 08/12/08 |
| 63863 | WH Manufacturing, Inc. (Comp) | Hopkinsville, KY | 08/13/08 | 08/12/08 |
| 63864 | Luminent, Inc. (State) | Chatsworth, CA | 08/13/08 | 08/11/08 |
| 63865 | SFO Apparel (Wkrs) | Brisbane, CA | 08/13/08 | 08/02/08 |
| 63866 | General Electric Company (State) | Plainville, CT | 08/13/08 | 08/13/08 |
| 63867 | Unifi, Inc. (Comp) | Staunton, VA | 08/13/08 | 08/12/08 |
| 63868 | MSX International (UAW) | St. Louis, MO | 08/14/08 | 08/13/08 |
| 63869 | Syntex Rubber Corporation (State) | Bridgeport, CT | 08/14/08 | 08/13/08 |
| 63870 | Peerless-Winsmith, Inc. (IUECWA) | Springville, NY | 08/14/08 | 08/08/08 |
| 63871 | Maui Land and Pineapple Co./Maui Pineapple Co. (ILWU) | Kahului, HI | 08/14/08 | 08/06/08 |
| 63872 | American Standard, AS America (Comp) | Paintsville, KY | 08/14/08 | 08/01/08 |
| 63873 | C V Industries (Wkrs) | Hickory, NC | 08/14/08 | 08/13/08 |
| 63874 | Northern Technologies, Inc. (Comp) | Spokane Valley, WA | 08/14/08 | 08/13/08 |
| 63875 | J D Lumber, Inc. (Comp) | Priest River, ID | 08/14/08 | 08/12/08 |
| 63876 | KMC Industries (Wkrs) | Denmark, WI | 08/15/08 | 08/12/08 |
| 63877 | Covidien (Comp) | Watertown, NY | 08/15/08 | 08/11/08 |
| 63878 | Gerber Scientific, Inc. (Comp) | South Windsor, CT | 08/15/08 | 08/14/08 |
| 63879 | Catawissa Lumber and Specialty Co. (Comp) | West Jefferson, NC | 08/15/08 | 08/14/08 |
| 63880 | Cequent Electrical Products (Wkrs) | Tekonsha, MI | 08/15/08 | 08/06/08 |
| 63881 | JCIM, LLC (Comp) | Caro, MI | 08/15/08 | 08/08/08 |

[FR Doc. E8–20037 Filed 8–28–08; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–63,898]**

### Magna Services of America, Inc., Troy, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 19, 2008 in response to a worker petition filed by the state workforce office on behalf of workers at Magna Services of America, Inc., Troy, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 20th day of August 2008.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E8–20038 Filed 8–28–08; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–63,618]**

### Whirlpool Corporation, Fort Smith, AR; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 30, 2008 in response to a worker petition filed by a state agency representative on behalf of workers of Whirlpool Corporation, Fort Smith, Arkansas.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 18th day of August 2008.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E8–20044 Filed 8–28–08; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Bureau of Labor Statistics

### Federal Economic Statistics Advisory Committee; Notice of Renewal

Pursuant to the Federal Advisory Committee Act (FACA), 5 U.S.C. App. II, the Secretary of Labor has determined that reestablishment of the charter of the Federal Economic Statistics Advisory Committee (FESAC) is necessary and in the public interest in connection with the performance of duties imposed upon the Commissioner of Labor Statistics by 29 U.S.C. 1, 2, 3, 4, 5, 6, 7, 8, and 9. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

*Name of Committee:* Federal Economic Statistics Advisory Committee.

*Purpose and Objective:* The Committee presents advice and makes recommendations to the Department of Labor, Bureau of Labor Statistics and the Department of Commerce, Bureau of Economic Analysis and Bureau of the Census (the Agencies) from the perspective of the professional economics and statistics community. The Committee examines the Agencies' programs and provides advice on statistical methodology, research needed, and other technical matters related to the collection, tabulation, and analysis of Federal economic statistics.

*Balanced Membership Plan:* The Committee is a technical committee that is balanced in terms of the professional expertise required. It consists of approximately 14 members, appointed by the Agencies. Its members are economists, statisticians, and behavioral scientists who are recognized for their attainments and objectivity in their respective fields.

*Duration:* Continuing.

*Agency Contact:* Cheryl Kerr, 202–691–7808.

Signed at Washington, DC, this 25th day of August 2008.

**Philip L. Rones,**

*Deputy Commissioner, Bureau of Labor Statistics.*

[FR Doc. E8–20054 Filed 8–28–08; 8:45 am]

**BILLING CODE 4510–24–P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2007–0039]**

### Intertek Testing Services NA, Inc.; Expansion of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** This notice announces the Occupational Safety and Health Administration's final decision expanding the recognition of Intertek Testing Services NA, Inc., (ITSNA) as a Nationally Recognized Testing Laboratory under 29 CFR 1910.7.

**DATES:** The expansion of recognition becomes effective on August 29, 2008.

**FOR FURTHER INFORMATION CONTACT:** MaryAnn Garrahan, Director, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–3655, Washington, DC 20210, or phone (202) 693–2110.

**SUPPLEMENTARY INFORMATION:**

#### Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice that it is expanding recognition of Intertek Testing Services NA, Inc., (ITSNA) as a Nationally Recognized Testing Laboratory (NRTL). ITSNA's expansion covers the use of additional test standards. OSHA's current scope of recognition for ITSNA may be found in the following informational Web page: *http://www.osha.gov/dts/otpca/nrtl/its.html.*

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products approved by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational Web page for each NRTL that details its scope of recognition. These pages can be accessed from the Web site at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

In an earlier action involving ITSNA, OSHA issued a **Federal Register** notice modifying its recognition, along with the recognition of other NRTLs, by replacing or deleting test standards that standards-developing organizations previously revised or withdrew (70 FR 11273, March 8, 2005). In a subsequent **Federal Register** notice, OSHA granted ITSNA's most recent application, which was for an expansion of recognition (68 FR 62479, November 4, 2003).

ITSNA submitted an application, dated August 25, 2005, (see Exhibit 48–1, as cited in the preliminary notice) to expand its recognition to include 56 additional test standards. One standard, however, is already included in ITSNA's scope and another has been withdrawn by the standards-developing organization. The NRTL Program staff has determined that the remaining 54 standards are ''appropriate test standards'' within the meaning of 29 CFR 1910.7(c). In connection with the expansion, OSHA staff performed an onsite visit of the NRTL's Cortland site

(its headquarters facility) in May 2006. Based on this visit, the staff recommends expansion of the ITSNA recognition to include the 54 test standards (see Exhibit 48–4). Therefore, OSHA is approving these 54 test standards for the expansion.

Based on this review, OSHA published a preliminary notice announcing the expansion application in the **Federal Register** on January 28, 2008 (73 FR 4919). Comments were requested by February 12, 2008, but no comments were received in response to this notice. OSHA is now proceeding with this final notice to grant ITSNA's expansion application.

You may obtain or review copies of all public documents pertaining to the ITSNA application by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–2625, Washington, DC, 20210. Docket No. OSHA–2007–0039 (formerly NRTL1–89) contains all materials in the record concerning ITSNA's recognition.

The current addresses of the ITSNA facilities (sites) already recognized by OSHA are:

ITSNA, Inc., 3933 U.S. Route 11, Cortland, New York 13045;
ITSNA, Inc., 1950 Evergreen Boulevard, Duluth, Georgia 30096;
ITSNA, Inc., 1365 Adams Court, Menlo Park, California 94025;
ITSNA, Inc., 70 Codman Hill Road, Boxborough, Massachusetts 01719;
ITSNA, Inc., 27611 LaPaz Road, Suite C, Laguna Niguel, California 92677;
ITSNA, Inc., 8431 Murphy Drive, Middleton, Wisconsin 53562;
ITSNA, Inc., 7250 Hudson Blvd., Suite 100, Oakdale, Minnesota 55128;
ITSNA, Inc., 40 Commerce Way, Unit B, Totowa, New Jersey 07512;
ITSNA, Inc., 731 Enterprise Drive, Lexington, Kentucky 40510;
ITSNA Ltd., 1500 Brigantine Drive, Coquitlam, British Columbia V3K 7C1, Canada;
ITS Hong Kong Ltd., 2/F., Garment Centre, 576 Castle Peak Road, Kowloon, Hong Kong;
ITS Taiwan Ltd., 5F, No. 423, Ruiguang Rd., Neihu District, Taipei City 114, Taiwan R.O.C.; and
ITSNA Sweden AB, Box 1103, S–164 #22, Kista, Stockholm, Sweden.

## Final Decision and Order

NRTL Program staff examined ITSNA's application, the assessor's recommendation, and other pertinent information. Based upon this examination and the assessor's recommendation, OSHA finds that ITSNA has met the requirements of 29 CFR 1910.7 for expansion of its recognition, subject to the limitation and conditions listed below. Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the recognition of ITSNA, subject to this limitation and these conditions.

*Limitation*

OSHA limits the expansion of ITSNA's recognition to testing and certification of products for demonstration of conformance to the following test standards, each of which OSHA has determined is an appropriate test standard, within the meaning of 29 CFR 1910.7(c):

UL 5B Strut-Type Channel Raceways and Fittings
UL 10A Tin-Clad Fire Doors
UL 30 Metal Safety Cans
UL 38 Manual Signaling Boxes for Fire Alarm Systems
UL 51 Power-Operated Pumps for Anhydrous Ammonia and LP-Gas
UL 58 Steel Underground Tanks for Flammable and Combustible Liquids
UL 80 Steel Tanks for Oil-Burner Fuels and Other Combustible Liquids
UL 92 Fire Extinguisher and Booster Hose
UL 125 Valves for Anhydrous Ammonia and LP-Gas (Other Than Safety Relief)
UL 132 Safety Relief Valves for Anhydrous Ammonia and LP-Gas
UL 144 LP-Gas Regulators
UL 193 Alarm Valves for Fire-Protection Service
UL 194 Gasketed Joints for Ductile-Iron Pipe and Fittings for Fire Protection Service
UL 252 Compressed Gas Regulators
UL 268 Smoke Detectors for Fire Alarm Signaling Systems
UL 268A Smoke Detectors for Duct Application
UL 346 Waterflow Indicators for Fire Protective Signaling Systems
UL 404 Gauges, Indicating Pressure, for Compressed Gas Service
UL 441 Gas Vents
UL 452 Antenna—Discharge Units
UL 486D Sealed Wire Connector Systems
UL 495 Power-Operated Dispensing Devices for LP-Gas
UL 515 Electrical Resistance Heat Tracing for Commercial and Industrial Applications
UL 521 Heat Detectors for Fire Protective Signaling Systems
UL 539 Single and Multiple Station Heat Alarms
UL 555S Smoke Dampers
UL 568 Nonmetallic Cable Tray Systems
UL 681 Installation and Classification of Burglar and Holdup Alarm Systems
UL 943B Appliance Leakage-Current Interrupters
UL 985 Household Fire Warning System Units
UL 1053 Ground-Fault Sensing and Relaying Equipment
UL 1058 Halogenated Agent Extinguishing System Units
UL 1062 Unit Substations
UL 1093 Halogenated Agent Fire Extinguishers
UL 1254 Pre-Engineered Dry Chemical Extinguishing System Units
UL 1322 Fabricated Scaffold Planks and Stages
UL 1412 Fusing Resistors and Temperature-Limited Resistors for Radio- and Television-Type Appliances
UL 1468 Direct Acting Pressure Reducing and Pressure Restricting Valves
UL 1681 Wiring Device Configurations
UL 1730 Smoke Detector Monitors and Accessories for Individual Living Units of Multifamily Residences and Hotel/Motel Rooms
UL 2085 Protected Aboveground Tanks for Flammable and Combustible Liquids
UL 2129 Halocarbon Clean Agent Fire Extinguishers
UL 2388 Flexible Lighting Products
UL 60335–2–8 Household and Similar Electrical Appliances, Part 2: Particular Requirements for Shavers, Hair Clippers, and Similar Appliances
UL 60947–1 Low-Voltage Switchgear and Controlgear—Part 1: General Rules
UL 60947–7–1 Low-Voltage Switchgear and Controlgear—Part 7–1: Ancillary Equipment—Terminal Blocks for Copper Conductors
UL 60947–7–2 Low-Voltage Switchgear and Controlgear—Part 7–2: Ancillary Equipment—Protective Conductor Terminal Blocks for Copper Conductors
UL 60947–7–3 Low-Voltage Switchgear and Controlgear—Part 7–3: Ancillary Equipment—Safety Requirements for Fuse Terminal Blocks
UL 61010A–2–010 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Equipment for the Heating of Materials
UL 61010A–2–041 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Autoclaves Using Steam for the Treatment of Medical Materials and for Laboratory Processes
UL 61010A–2–042 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Autoclaves and Sterilizers Using

Toxic Gas for the Treatment of Medical Materials, and for Laboratory Processes

UL 61010A–2–051 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Equipment for Mixing and Stirring

UL 61010A–2–061 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Atomic Spectrometers with Thermal Atomization and Ionization

UL 61010B–2–031 Electrical Equipment for Measurement, Control, and Laboratory Use; Part 2: Particular Requirements for Hand-Held Probe Assemblies for Electrical Measurement and Test

The designations and titles of the above test standards were current at the time of the preparation of this notice.

OSHA's recognition of ITSNA, or any NRTL, for a particular test standard is limited to equipment or materials (i.e., products) for which OSHA standards require third-party testing and certification before use in the workplace. Consequently, if a test standard also covers any product(s) for which OSHA does not require such testing and certification, an NRTL's scope of recognition does not include that product(s).

Test standards listed above may be approved as an American National Standard by the American National Standards Institute (ANSI). However, for convenience, we use the designation of the standards-developing organization for the standard as opposed to the ANSI designation. Under our procedures, any NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard. You may contact ANSI to find out whether a test standard is currently ANSI-approved.

*Conditions*

ITSNA must also abide by the following conditions of the recognition, in addition to those conditions already required by 29 CFR 1910.7:

OSHA must be allowed access to ITSNA's facilities and records to ascertain continuing compliance with the terms of its recognition and to perform investigations as OSHA deems necessary;

If ITSNA has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the test standard-developing organization of this concern and provide that organization with appropriate relevant information upon which its concern is based;

ITSNA must not engage in, or permit others to engage in, any misrepresentation of the scope or conditions of its recognition. As part of this condition, ITSNA agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition applies, and also clearly indicating that its recognition is limited to certain products;

ITSNA must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major changes in its operations as an NRTL, including details of these changes;

ITSNA will meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition; and

ITSNA will continue to meet the requirements for recognition in all areas where it has been recognized.

Signed at Washington, DC, this 20th day of August, 2008.

**Edwin G. Foulke, Jr.,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. E8–20171 Filed 8–28–08; 8:45 am]

**BILLING CODE 4510–26–P**

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## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2006–0048]**

### NSF International; Application for Expansion of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** This notice announces the application of NSF International (NSF) for expansion of its recognition and presents the Agency's preliminary finding to grant this request. This preliminary finding does not constitute an interim or temporary approval of this application.

**DATES:** You must submit information or comments, or any request for extension of the time to comment, by the following dates:

- *Hard copy:* postmarked or sent by September 15, 2008.
- *Electronic transmission or facsimile:* sent by September 15, 2008.

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

*Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

*Fax:* If your submissions, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

*Mail, hand delivery, express mail, or messenger or courier service:* You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2006–0048 (formerly NRTL2–98), U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, and messenger and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., e.t.

*Instructions:* All submissions must include the Agency name and the OSHA docket number (OSHA Docket No.OSHA–2006–0048). Submissions, including any personal information you provide, are placed in the public docket without change and may be made available online at *http://www.regulations.gov*.

*Docket:* To read or download submissions or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

*Extension of Comment Period:* Submit requests for an extension of the comment period to the Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–3655, Washington, DC 20210, or by fax to (202) 693–1644.

**FOR FURTHER INFORMATION CONTACT:** MaryAnn Garrahan, Director, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–3655, Washington, DC 20210, or phone (202) 693–2110. Our Web page includes information about the NRTL Program (see *http://www.osha.gov* and select ''N'' in the site index).

**SUPPLEMENTARY INFORMATION:**

## Notice of Expansion Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice that NSF International (NSF) has applied for expansion of its current recognition as a Nationally Recognized Testing Laboratory (NRTL). NSF's expansion request covers the use of an additional test standard. OSHA's current scope of recognition for NSF may be found in the following informational Web page: *http://www.osha.gov/dts/otpca/nrtl/nsf.html*.

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products approved by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition, or for an expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational Web page for each NRTL that details its scope of recognition. These pages can be accessed from the Web site at *http://www.osha.gov/dts/otpca/nrtl/index.html*.

In an earlier action involving NSF, OSHA granted NSF's most recent application, which was for an expansion of recognition (71 FR 70431, December 4, 2006).

The current address of the NSF facility (site) already recognized by OSHA is: NSF International, 789 Dixboro Road, Ann Arbor, MI 48105.

## General Background on the Application

NSF has submitted an application, dated October 23, 2007 (see Exhibit 18–1), to expand its recognition to include one additional test standard. The NRTL Program staff has determined that this standard is an ''appropriate test standard'' within the meaning of 29 CFR 1910.7(c). In connection with this request, NRTL Program assessment staff performed an on-site review of NSF's testing facility in June 2007 and recommended that NSF's recognition be expanded to include the additional test standard listed below (see Exhibit 18–2). As a result, the Agency would approve the test standard for the expansion.

NSF seeks expansion of its recognition for testing and certification of products for demonstration of conformance to the following test standard:

*UL 1285 Pipe and Couplings, Polyvinyl Chloride (PVC), for Underground Fire Service*

The designation and title of the above test standard was current at the time of the preparation of this notice.

OSHA's recognition of NSF, or any NRTL, for a particular test standard is limited to equipment or materials (i.e., products) for which OSHA standards require third-party testing and certification before use in the workplace. Consequently, if a test standard also covers any product(s) for which OSHA does not require such testing and certification, an NRTL's scope of recognition does not include that product(s).

The test standard listed above may be approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience, we use the designation of the standards-developing organization for the standard as opposed to the ANSI designation. Under our procedures, any NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard. You may contact ANSI to find out whether a test standard is currently ANSI-approved.

## Preliminary Finding on the Application

NSF has submitted an acceptable request for expansion of its recognition as an NRTL. Our review of the application file, the assessor's recommendation, and other pertinent documents indicate that NSF can meet the requirements, as prescribed by 29 CFR 1910.7, for the expansion for the additional test standard listed above. This preliminary finding does not constitute an interim or temporary approval of the application.

OSHA welcomes public comments, in sufficient detail, as to whether NSF has met the requirements of 29 CFR 1910.7 for expansion of its recognition as a Nationally Recognized Testing Laboratory. Your comments should consist of pertinent written documents and exhibits. Should you need more time to comment, you must request it in writing, including reasons for the request. OSHA must receive your written request for an extension at the address provided above no later than the last date for comments. OSHA will limit any extension to 30 days unless the requester justifies a longer period. We may deny a request for an extension if it is not adequately justified. You may obtain or review copies of NSF's request, the assessor's recommendation, other pertinent documents, and all submitted comments, as received, by contacting the Docket Office, Room N–2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. Docket No. OSHA–2006–0048 (formerly NRTL2–98) contains all materials in the record concerning NSF's application.

The NRTL Program staff will review all timely comments and, after resolution of issues raised by these comments, will recommend whether to grant NSF's expansion request. The Assistant Secretary will make the final decision on granting the request and in making this decision, may undertake other proceedings that are prescribed in Appendix A to 29 CFR Section 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

Signed at Washington, DC, this 20th day of August, 2008.

**Edwin G. Foulke, Jr.,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. E8–20161 Filed 8–28–08; 8:45 am]

BILLING CODE 4510–26–P

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## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2007–0043]**

### TUV America, Inc.; Expansion of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** This notice announces the Occupational Safety and Health Administration's final decision expanding the recognition of TUV America, Inc., (TUVAM) as a Nationally Recognized Testing Laboratory under 29 CFR 1910.7.

**DATES:** The expansion of recognition becomes effective on August 29, 2008.

**FOR FURTHER INFORMATION CONTACT:** MaryAnn Garrahan, Director, Office of

Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–3655, Washington, DC 20210, or phone (202) 693–2110.

**SUPPLEMENTARY INFORMATION:**

## Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice that it is expanding recognition of TUV America, Inc., (TUVAM) as a Nationally Recognized Testing Laboratory (NRTL). TUVAM's expansion covers the use of additional test standards. OSHA's current scope of recognition for TUVAM may be found in the following informational Web page: *http://www.osha.gov/dts/otpca/nrtl/tuvam.html.*

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products approved by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational Web page for each NRTL that details its scope of recognition. These pages can be accessed from the Web site at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

In an earlier action involving TUVAM, OSHA issued a **Federal Register** notice modifying its recognition, along with the recognition of other NRTLs, by replacing or deleting test standards that standards-developing organizations previously revised or withdrew (70 FR 11273, March 8, 2005). In a subsequent **Federal Register** notice, OSHA granted TUVAM's most recent application, which was for an expansion of recognition (70 FR 51373, August 30, 2005).

TUVAM submitted an application, dated October 6, 2005 (see Exhibit 11–1, as cited in the preliminary notice), to expand its recognition to include 142 additional test standards. It amended its application on February 17, 2006, to add two more test standards, and then in June 2006 and July 2007 further amended its application to reduce its request to 89 test standards (see Exhibits 11–2 through 11–4). One standard, however, has been withdrawn by the standards-developing organization. Thus, TUVAM's request includes 88 standards. The NRTL Program staff has determined that the remaining 88 standards are ''appropriate test standards'' within the meaning of 29 CFR 1910.7(c). In connection with this request, OSHA staff performed an on-site review of TUVAM's Massachusetts testing facility and recommended that TUVAM's recognition be expanded to include the additional 88 test standards listed below (see Exhibit 11–5).

Based on the review, OSHA published a preliminary notice announcing the expansion application in the **Federal Register** on February 7, 2008 (73 FR 7325). Comments were requested by February 22, 2008, but no comments were received in response to this notice. OSHA is now proceeding with this final notice to grant TUVAM's expansion application.

You may obtain or review copies of all public documents pertaining to the TUVAM application by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–2625, Washington, DC 20210. Docket No. OSHA–2007–0043 (formerly NRTL2–2001) contains all materials in the record concerning TUVAM's recognition.

The current addresses of the TUVAM's facilities (sites) already recognized by OSHA are: TUV Product Services (TUVAM), 5 Cherry Hill Drive, Danvers, MA 01923; TUV Product Services (TUVAM), 10040 Mesa Rim Road, San Diego, CA 92121; and TUV Product Services (TUVAM), 1775 Old Highway 8 NW, Suite 104, New Brighton (Minneapolis), MN 55112.

## Final Decision and Order

NRTL Program staff examined the TUVAM's application, the assessor's recommendation, and other pertinent information. Based upon this examination and the assessor's recommendation, OSHA finds that TUVAM has met the requirements of 29 CFR 1910.7 for expansion of its recognition, subject to the limitation and conditions listed below. Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the recognition of TUVAM, subject to this limitation and these conditions.

*Limitation*

OSHA limits the expansion of TUVAM's recognition to testing and certification of products for demonstration of conformance to the following test standards, each of which OSHA has determined is an appropriate test standard, within the meaning of 29 CFR 1910.7(c):

UL 48 Electric Signs
UL 69 Electric-Fence Controllers
UL 82 Electric Gardening Appliances
UL 201 Garage Equipment
UL 325 Door, Drapery, Gate, Louver, and Window Operators and Systems
UL 399 Drinking-Water Coolers
UL 474 Dehumidifiers
UL 482 Portable Sun/Heat Lamps
UL 497A Secondary Protectors for Communication Circuits
UL 506 Specialty Transformers
UL 561 Floor-Finishing Machines
UL 563 Ice Makers
UL 588 Seasonal and Holiday Decorative Products
UL 676 Underwater Luminaires and Submersible Junction Boxes
UL 696 Electric Toys
UL 697 Toy Transformers
UL 745–1 Portable Electric Tools
UL 745–2–1 Particular Requirements for Drills
UL 745–2–2 Particular Requirements for Screwdrivers and Impact Wrenches
UL 745–2–3 Particular Requirements for Grinders, Polishers, and Disk-Type Sanders
UL 745–2–4 Particular Requirements for Sanders
UL 745–2–5 Particular Requirements for Circular Saws and Circular Knives
UL 745–2–6 Particular Requirements for Hammers
UL 745–2–8 Particular Requirements for Shears and Nibblers
UL 745–2–9 Particular Requirements for Tappers
UL 745–2–11 Particular Requirements for Reciprocating Saws
UL 745–2–12 Particular Requirements for Concrete Vibrators
UL 745–2–14 Particular Requirements for Planers
UL 745–2–17 Particular Requirements for Routers and Trimmers
UL 745–2–30 Particular Requirements for Staplers
UL 745–2–31 Particular Requirements for Diamond Core Drills
UL 745–2–32 Particular Requirements for Magnetic Drill Presses
UL 745–2–33 Particular Requirements for Portable Bandsaws

UL 745–2–34 Particular Requirements for Strapping Tools
UL 745–2–35 Particular Requirements for Drain Cleaners
UL 745–2–36 Particular Requirements for Hand Motor Tools
UL 745–2–37 Particular Requirements for Plate Jointers
UL 749 Household Dishwashers
UL 775 Graphic Arts Equipment
UL 778 Motor-Operated Water Pumps
UL 826 Household Electric Clocks
UL 858 Household Electric Ranges
UL 859 Household Electric Personal Grooming Appliances
UL 867 Electrostatic Air Cleaners
UL 875 Electric Dry-Bath Heaters
UL 921 Commercial Dishwashers
UL 935 Fluorescent-Lamp Ballasts
UL 969 Marking and Labeling Systems
UL 977 Fused Power-Circuit Devices
UL 979 Water Treatment Appliances
UL 984 Hermetic Refrigerant Motor-Compressors
UL 987 Stationary and Fixed Electric Tools
UL 1018 Electric Aquarium Equipment
UL 1028 Hair Clipping and Shaving Appliances
UL 1030 Sheathed Heating Elements
UL 1086 Household Trash Compactors
UL 1088 Temporary Lighting Strings
UL 1097 Double Insulation Systems for Use in Electrical Equipment
UL 1206 Electric Commercial Clothes-Washing Equipment
UL 1230 Amateur Movie Lights
UL 1240 Electric Commercial Clothes-Drying Equipment
UL 1411 Transformers and Motor Transformers for Use In Audio-, Radio-, and Television-Type Appliances
UL 1419 Professional Video and Audio Equipment
UL 1431 Personal Hygiene and Health Care Appliances
UL 1449 Surge Protective Devices
UL 1484 Residential Gas Detectors
UL 1559 Insect-Control Equipment—Electrocution Type
UL 1561 Dry-Type General Purpose and Power Transformers
UL 1563 Electric Spas, Equipment Assemblies, and Associated Equipment
UL 1573 Stage and Studio Luminaires and Connector Strips
UL 1574 Track Lighting Systems
UL 1594 Sewing and Cutting Machines
UL 1598 Luminaires
UL 1741 Inverters, Converters, Controllers and Interconnection System Equipment for Use With Distributed Energy Resources
UL 1778 Uninterruptible Power Supply Equipment
UL 1786 Direct Plug-In Nightlights
UL 1838 Low Voltage Landscape Lighting Systems
UL 1963 Refrigerant Recovery/Recycling Equipment
UL 1993 Self-Ballasted Lamps and Lamp Adapters
UL 2044 Commercial Closed-Circuit Television Equipment
UL 2111 Overheating Protection for Motors
UL 2157 Electric Clothes Washing Machines and Extractors
UL 2158 Electric Clothes Dryers
UL 60335–2–3 Household and Similar Electrical Appliances, Part 2: Particular Requirements for Electric Irons
UL 60745–1 Hand-Held Motor-Operated Electric Tools—Safety—Part 1: General Requirements
UL 61010A–2–020 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Centrifuges
UL 61010A–2–061 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Atomic Spectrometers with Thermal Atomization and Ionization
UL 61010B–2–031 Electrical Equipment for Measurement, Control, and Laboratory Use; Part 2: Particular Requirements for Hand-Held Probe Assemblies for Electrical Measurement and Test

The designations and titles of the above test standards were current at the time of the preparation of this notice.

OSHA's recognition of TUVAM, or any NRTL, for a particular test standard is limited to equipment or materials (i.e., products) for which OSHA standards require third-party testing and certification before use in the workplace. Consequently, if a test standard also covers any product(s) for which OSHA does not require such testing and certification, an NRTL's scope of recognition does not include that product(s).

Test standards listed above may be approved as an American National Standard by the American National Standards Institute (ANSI). However, for convenience, we use the designation of the standards-developing organization for the standard as opposed to the ANSI designation. Under our procedures, any NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard. You may contact ANSI to find out whether a test standard is currently ANSI-approved.

*Conditions*

TUVAM must also abide by the following conditions of the recognition, in addition to those conditions already required by 29 CFR 1910.7:

OSHA must be allowed access to TUVAM's facilities and records to ascertain continuing compliance with the terms of its recognition and to perform investigations as OSHA deems necessary;

If TUVAM has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the test standard developing organization of this concern and provide that organization with appropriate relevant information upon which its concern is based;

TUVAM must not engage in, or permit others to engage in, any misrepresentation of the scope or conditions of its recognition. As part of this condition, TUVAM agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition applies, and also clearly indicating that its recognition is limited to certain products;

TUVAM must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major changes in its operations as an NRTL, including details of these changes;

TUVAM will meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition; and

TUVAM will continue to meet the requirements for recognition in all areas where it has been recognized.

Signed at Washington, DC, this 22nd day of August, 2008.

**Edwin G. Foulke, Jr.,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. E8–20169 Filed 8–28–08; 8:45 am]

BILLING CODE 4510–26–P

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Records Schedules; Availability and Request for Comments

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records

schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

**DATES:** Requests for copies must be received in writing on or before September 29, 2008. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

**ADDRESSES:** You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

*Mail:* NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

*E-mail: requestschedule@nara.gov.*

*Fax:* 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

**FOR FURTHER INFORMATION CONTACT:** Laurence Brewer, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. *Telephone:* 301–837–1539. *E-mail: records.mgt@nara.gov.*

**SUPPLEMENTARY INFORMATION:** Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1228.24(b)(3).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

*Schedules Pending*

1. Department of Commerce, National Oceanic and Atmospheric Administration (N1–370–07–5, 12 items, 9 temporary items). Records of the Hydrographic Surveys Division, including digital data working files used in preparation of bathymetric grids, wire drag supplements to smooth sheets, inputs and outputs for the Hydrographic Survey Index System, digital files and system outputs for the Hydrographic Survey Metadata Database, and digital files, inputs, and outputs for the Hydrographic Survey Tracker. Proposed for permanent retention are bathymetric grids, hydrographic descriptive reports and field examination reports in digital form, and digital files for the Hydrographic Survey Index System. The proposed disposition instructions are limited to paper records for some items and to electronic records for other items.

2. Department of Defense, Office of the Secretary of Defense (N1–330–08–7, 2 items, 1 temporary item). Master file associated with an electronic information system used to report sexual assault and prevention data. Data includes victim and perpetrator background information, actions taken, and final results. Proposed for permanent retention are annual reports on sexual assaults.

3. Department of Defense, Office of the Secretary of Defense (N1–330–08–8, 1 item, 1 temporary item). Master file associated with an electronic information system used to track human research protocol data. Data includes researcher and reviewer contact information, and protocol descriptions, reviews, approvals, and exemptions.

4. Department of Education, Office of Management (N1–441–08–4, 2 items, 2 temporary items). Records relating to civil rights cases docketed for hearing and resolution. Included are case files, motions, briefs, exhibits, transcripts of hearings, orders, decisions, and correspondence.

5. Department of Homeland Security, National Protection and Programs Directorate (N1–563–08–32, 1 item, 1 temporary item). Master file for an electronic information system of the Office of Emergency Communications, supporting interoperability of communications equipment between local, state and Federal first responders.

6. Department of the Interior, United States Geological Survey (N1–57–08–2, 41 items, 38 temporary items). Records associated with such administrative housekeeping functions as acquisition and supply; budgeting, financial management, and accounting; inventions, patents, and technology transfer; legal and congressional affairs; and information services. Included are information quality records, technology transfer agreements and supporting materials, financial management planning and project records, performance and accountability reports, and investigative case files. Proposed for permanent retention are biographical

records for top-level officials, congressional hearing/briefing files, and the record set of budget justification and performance information books. The proposed disposition instructions are limited to paper records.

7. Department of Justice, Federal Bureau of Investigation (N1–65–08–6, 1 item, 1 temporary item). Unsuccessful employment applications dated prior to 1921, for which the General Records Schedule does not apply.

8. Department of Justice, Federal Bureau of Investigation (N1–65–08–10, 6 items, 4 temporary items). Administrative records, background material, and working papers of the Strategic Execution Team, which analyzes and improves the Bureau's performance of its national security mission. Proposed for permanent retention are the briefings, reports, minutes, presentations, communications, and recommendations of the Steering Committee.

9. Department of the Navy, United States Marine Corps (N1–NU–07–15, 3 items, 2 temporary items). Outputs of an electronic information system that gathers joint lessons learned. Proposed for permanent retention are the master files of the electronic information system. The proposed disposition instructions for the master files are limited to electronic records.

10. Environmental Protection Agency, Enforcement and Compliance Assurance (N1–412–08–11, 1 item, 1 temporary item). Electronic data maintained in the Integrated Data for Enforcement Analysis system, a data warehouse for which recordkeeping copies of individual systems are maintained and scheduled elsewhere.

11. National Aeronautics and Space Administration, Agency-wide (N–255–08–1, 3 items, 3 temporary items). This schedule authorizes the agency to apply the existing disposition instructions to records regardless of the recordkeeping medium. Included are calibration records of equipment used as inspection, measuring, or test equipment, reference copies, and metrology compliance documents. Paper recordkeeping copies of these records were previously approved for disposal.

12. Nuclear Regulatory Commission, Office of Nuclear Security and Incident Response (N1–431–08–1, 4 items, 2 temporary items). Subject files containing correspondence and other records that are routine or below the Office Director level and that relate to policy and procedures for security of nuclear reactors and materials. Proposed for permanent retention are subject files containing records at the Office Director level, and site-specific case files relating to security of nuclear reactors and materials.

13. Tennessee Valley Authority, Financial Services (N1–142–08–1, 5 items, 5 temporary items). Records relating to financial planning, annual government performance and accounting reports, external audits, and Chief Financial Officer committee meetings. Included are such records as annual plans, financial reports, audit reports of financial statements, and meeting minutes.

Dated: August 25, 2008.

**Michael J. Kurtz,**

*Assistant Archivist for Records Services—Washington, DC.*

[FR Doc. E8–20231 Filed 8–28–08; 8:45 am]

BILLING CODE 7515–01–P

## NATIONAL SCIENCE FOUNDATION

### Notice of Permit Application Received Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of Permit Applications Received Under the Antarctic Conservation Act.

**SUMMARY:** Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application for operation of a camp at Patriot Hills, Heritage Range, southern Ellsworth Mountains, Antarctica, by Antarctic Logistics & Expeditions, LLC, a company within the United States. The application is submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to this permit application within September 29, 2008. Permit applications may be inspected by interested parties at the Permit Office, address below.

**ADDRESSES:** Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

**FOR FURTHER INFORMATION CONTACT:** Dr. Polly A. Penhale or Nadene Kennedy at the above address or (703) 292–8030.

**SUPPLEMENTARY INFORMATION:** NSF's Antarctic Waste Regulation, 45 CFR Part 671, requires all U.S. citizens and entities to obtain a permit for the use or release of a designated pollutant in Antarctica, and for the release of waste in Antarctica. NSF has received a permit application under this Regulation for operation of remote camp at Patriot Hills, Antarctica, and logistic support services for scientific and other expeditions, film crews, and tourists. These activities include aircraft support, cache positioning, camp and field support, resupply, search and rescue, medevac, medical support and logistic support for some National Operators. The camp can accommodate up to 100 people and is adjacent to a 100m x 2000m blue-ice runway. The blue-ice runway is a natural feature that requires limited amount of preparation and upkeep for aircraft use. There are standard programs offered on a regular basis. These include: Climbing trips to Vinson Massif, the Ellsworth Mountains and the Transantarctic Mountains; ski trips to the Ellsworth Mountains and the Geographic South Pole; and flights to the Geographic South Pole, and the Emperor Penguin Colony at the Dawson Lambton Glacier.

A several aircraft will be operated by Antarctic Logistics & Expeditions throughout the Antarctic. They may consist of the following: Twin Otter aircraft, and Ilyushin 76 (IL–76), and either a turbine DC–3 or a Cessna 185.

The permit applicant is: David Rootes, Environmental Manager, Antarctic Logistics & Expeditions, LLC, 4376 South 700 East, Suite 226, Salt Lake City, Utah 84107–3006. Permit application No. 2009 WM–004.

**Nadene G. Kennedy,**

*Permit Officer.*

[FR Doc. E8–20083 Filed 8–28–08; 8:45 am]

BILLING CODE 7555–01–P

## NATIONAL SCIENCE FOUNDATION

### Notice of Permits Issued Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

**FOR FURTHER INFORMATION CONTACT:** Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

**SUPPLEMENTARY INFORMATION:** On July 24, 2008, the National Science Foundation published a notice in the **Federal Register** of permit applications received. A permit was issued on August 25, 2008 to:

Ron Naveen,

**Permit No. 2009–015**

**Nadene G. Kennedy,**

*Permit Officer.*

[FR Doc. E8–20096 Filed 8–28–08; 8:45 am]

**BILLING CODE 7555–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–390]**

## Tennessee Valley Authority; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC, or the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–90 issued to Tennessee Valley Authority (the licensee) for operation of the Watts Bar Nuclear Plant Unit 1 located in Rhea County, Tennessee.

The proposed amendment would revise the Technical Specification (TS) requirements related to control room envelope (CRE) habitability in accordance with the NRC-approved Revision 3 of Technical Specification Task Force (TSTF) Standard Technical Specifications (STS) Change Traveler TSTF–448, ''Control Room Habitability.''

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The NRC staff published a notice of opportunity for comment in the **Federal Register** on October 17, 2006 (71 FR 61075), on possible license amendments adopting TSTF–448 using the NRC's consolidated line-item improvement process (CLIIP) for amending licensees' TSs, which included a model safety evaluation (SE) and model no significant hazards consideration (NSHC) determination. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on January 17, 2007 (72 FR 2022), which included the resolution of public comments on the model SE and model NSHC determination. The licensee affirmed the applicability of the following NSHC determination in its application dated October 26, 2007.

As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility. The proposed change does not alter or prevent the ability of structures, systems, and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change revises the TS for the CRE emergency ventilation system, which is a mitigation system designed to minimize unfiltered air leakage into the CRE and to filter the CRE atmosphere to protect the CRE occupants in the event of accidents previously analyzed. An important part of the CRE emergency ventilation system is the CRE boundary. The CRE emergency ventilation system is not an initiator or precursor to any accident previously evaluated. Therefore, the probability of any accident previously evaluated is not increased. Performing tests to verify the operability of the CRE boundary and implementing a program to assess and maintain CRE habitability ensure that the CRE emergency ventilation system is capable of adequately mitigating radiological consequences to CRE occupants during accident conditions, and that the CRE emergency ventilation system will perform as assumed in the consequence analyses of design basis accidents. Thus, the consequences of any accident previously evaluated are not increased. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The proposed change does not impact the accident analysis. The proposed change does not alter the required mitigation capability of the CRE emergency ventilation system, or its functioning during accident conditions as assumed in the licensing basis analyses of design basis accident radiological consequences to CRE occupants. No new or different accidents result from performing the new surveillance or following the new program. The proposed change does not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a significant change in the methods governing normal plant operation. The proposed change does not alter any safety analysis assumptions and is consistent with current plant operating practice. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation as determined. The proposed change does not affect safety analysis acceptance criteria. The proposed change will not result in plant operation in a configuration outside the design basis for an unacceptable period of time without compensatory measures. The proposed change does not adversely affect systems that respond to safely shut down the plant and to maintain the plant in a safe shutdown condition. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it

will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the person(s) may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person(s) whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request via electronic submission through the NRC E-filing system for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

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 process 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 E-Filing, at least ten (10) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) 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*. Information about applying for a digital ID certificate is available on 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, had a docket created, and downloaded the EIE viewer, it 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 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 on those participants 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, 11555 Rockville, Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

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 NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/ehd_proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, Participants are requested not to include copyrighted materials in their submissions.

For further details with respect to this license amendment application, see the application for amendment dated October 26, 2007, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (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.resource@nrc.gov*.

Dated at Rockville, Maryland, this 25th day of August 2008.

For the Nuclear Regulatory Commission.

**Patrick D. Milano,**

*Senior Project Manager, Watts Bar Special Projects Branch, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. E8–20118 Filed 8–28–08; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[EA–08–225]**

## In the Matter of Certain Licensees Authorized To Possess and Transfer Items Containing Radioactive Material Quantities of Concern; Order Imposing Additional Security Measures (Effective Immediately)

### I

The Licensees identified in Attachment A [1] to this Order, hold licenses issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) or an Agreement State, in accordance with the Atomic Energy Act of 1954, as amended, and 10 CFR Parts 30, 32, 70 and 71, or equivalent Agreement State regulations. The licenses authorize them to possess and transfer items containing radioactive material quantities of concern. This Order is being issued to all such Licensees who may transport radioactive material quantities of concern under the NRC's authority to protect the common defense and security, which has not been relinquished to the Agreement States. The Orders require compliance with specific additional security measures to enhance the security for transport of certain radioactive material quantities of concern.

### II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to Licensees in order to strengthen Licensees' capabilities and readiness to respond to a potential attack on this regulated activity. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of the current security measures. In addition, the Commission commenced a comprehensive review of its safeguards and security programs and requirements.

As a result of its initial consideration of current safeguards and security requirements, as well as a review of information provided by the intelligence community, the Commission has

[1] Attachment A contains sensitive information and will not be released to the public.

determined that certain security measures are required to be implemented by Licensees as prudent, interim measures to address the current threat environment in a consistent manner. Therefore, the Commission is imposing requirements, as set forth in Attachment B [2] of this Order, on all Licensees identified in Attachment A of this Order. These additional security measures, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the common defense and security continue to be adequately protected in the current threat environment. Attachment C of this Order contains the requirements for fingerprinting and criminal history record checks for individuals when licensee's reviewing official is determining access to Safeguards Information or unescorted access to the radioactive materials. These requirements will remain in effect until the Commission determines otherwise.

It is also recognized that some measures may not be possible or necessary for all shipments of radioactive material quantities of concern, or may need to be tailored to accommodate the Licensees' specific circumstances to achieve the intended objectives and avoid any unforeseen effect on the safe transport of radioactive material quantities of concern.

In light of the continuing threat environment, the Commission concludes that the security measures must be embodied in an Order, consistent with the established regulatory framework. The Commission has determined that some of the security measures contained in Attachment B of this Order contain Safeguards Information and will not be released to the public as per NRC's ''Order Imposing Requirements for the Protection of Certain Safeguards Information'' (EA–08–161), issued specifically to the Licensees identified in Attachment A to this Order. Access to Safeguards Information is limited to those persons who have established a need-to-know the information, are considered to be trustworthy and reliable, have been fingerprinted and undergone a Federal Bureau of Investigation (FBI) identification and criminal history records check in accordance with the NRC's ''Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information'' (EA–08–162). A need-to-know means a determination by a person having responsibility for protecting Safeguards Information that a proposed recipient's access to Safeguards Information is necessary in the performance of official, contractual, or licensee duties of employment. Individuals who have been fingerprinted and granted access to Safeguards Information by the reviewing official under the NRC's ''Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information'' (EA–08–162) do not need to be fingerprinted again for purposes of being considered for unescorted access.

This Order also requires that a reviewing official must consider the results of the Federal Bureau of Investigations criminal history records check in conjunction with other applicable requirements to determine whether an individual may be granted or allowed continued unescorted access. The reviewing official may be one that has previously been approved by NRC in accordance with the ''Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information'' (EA–08–162). Licensees may nominate additional reviewing officials for making unescorted access determinations in accordance with NRC Orders EA–08–162. The nominated reviewing officials must have access to Safeguards Information or require unescorted access to the radioactive material as part of their job duties.

To provide assurance that Licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, all Licensees identified in Attachment A to this Order shall implement the requirements identified in Attachments B and C to this Order. In addition, pursuant to 10 CFR 2.202, I find that in light of the common defense and security matters identified above, which warrant the issuance of this Order, the public health and safety require that this Order be immediately effective.

## III

Accordingly, pursuant to Sections 53, 63, 81, 147, 149, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Parts 30, 32, 70 and 71, It is hereby ordered, effective immediately, that all licensees identified in attachment a to this order shall comply with the following:

A. All Licensees shall, notwithstanding the provisions of any Commission or Agreement State regulation or license to the contrary, comply with the requirements described in Attachments B and C to this Order. The Licensees shall immediately start implementation of the requirements in Attachments B and C to the Order and shall complete implementation by February 17, 2009, or before the first shipment of radioactive material quantities of concern, whichever is sooner.

B. 1. All Licensees shall, within twenty (20) days of the date of this Order, notify the Commission, (1) if they are unable to comply with any of the requirements described in Attachments B or C, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the requirements would cause the Licensee to be in violation of the provisions of any Commission or Agreement State regulation or its license. The notification shall provide the Licensees' justification for seeking relief from or variation of any specific requirement.

2. Any Licensee that considers that implementation of any of the requirements described in Attachments B or C to this Order would adversely impact the safe transport of radioactive material quantities of concern must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachments B or requirement in question, or a schedule for modifying the activity to address the adverse safety condition. If neither approach is appropriate, the Licensee must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

C. 1. In accordance with the NRC's ''Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information'' (EA–08–162) only the NRC-approved reviewing official shall review results from an FBI criminal history records check. The licensee may use a reviewing official previously approved by the NRC as its reviewing official for determining access to Safeguards Information or the licensee may nominate another individual specifically for making unescorted access to radioactive material determinations, using the process

[2] Attachment B contains some requirements that are SAFEGUARDS INFORMATION, and cannot be released to the public. The remainder of the requirements contained in Attachment B that are not SAFEGUARDS INFORMATION will be released to the public.

described in EA–08–162. The reviewing official must have access to Safeguards Information or require unescorted access to the radioactive material as part of their job duties. The reviewing official shall determine whether an individual may have, or continue to have, unescorted access to radioactive materials that equal or exceed the quantities in Attachment B to this Order. Fingerprinting and the FBI identification and criminal history records check are not required for individuals exempted from fingerprinting requirements under 10 CFR 73.61 [72 FR 4945 (February 2, 2007)]. In addition, individuals who have a favorably decided U.S. Government criminal history records check within the last five (5) years, or have an active federal security clearance (provided in each case that the appropriate documentation is made available to the Licensee's reviewing official), have satisfied the Atomic Energy Act of 1954, as amended, fingerprinting requirement and need not be fingerprinted again for purposes of being considered for unescorted access.

2. No person may have access to Safeguards Information or unescorted access to radioactive materials if the NRC has determined, in accordance with its administrative review process based on fingerprinting and an FBI identification and criminal history records check, either that the person may not have access to Safeguards Information or that the person may not have unescorted access to a utilization facility, or radioactive material or other property subject to regulation by the NRC.

D. Fingerprints shall be submitted and reviewed in accordance with the procedures described in Attachment C to this Order. Individuals who have been fingerprinted and granted access to Safeguards Information by the reviewing official under Order EA–08–162, do not need to be fingerprinted again for purposes of being considered for unescorted access.

E. The Licensee may allow any individual who currently has unescorted access to radioactive materials, in accordance with this Order, to continue to have unescorted access without being fingerprinted, pending a decision by the reviewing official (based on fingerprinting, an FBI criminal history records check and a trustworthy and reliability determination) that the individual may continue to have unescorted access to radioactive materials that equal or exceed the quantities listed in Attachment B to this Order. The licensee shall complete implementation of the requirements of Attachments B and C to this Order by February 17, 2009.

F. 1. The Licensee shall, within twenty (20) days of the date of this Order, submit to the Commission a schedule for completion of each requirement described in Attachments B and C.

2. The Licensee shall report to the Commission when they have achieved full compliance with the requirements described in Attachments B and C.

G. Notwithstanding any provisions of the Commission's or an Agreement State's regulations to the contrary, all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

Licensee responses to Conditions B.1, B.2, F.1, and F.2 above shall be submitted to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, Licensee submittals that contain specific physical protection or security information considered to be Safeguards Information shall be put in a separate enclosure or attachment and, marked as ''SAFEGUARDS INFORMATION—MODIFIED HANDLING'' and mailed (no electronic transmittals *i.e.*, no e-mail or FAX) to the NRC.

The Director, Office of Federal and State Materials and Environmental Management Programs, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

## IV

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order within twenty (20) days of the date of this Order. In addition, the Licensee and any other person adversely affected by this Order may request a hearing of this Order within twenty (20) days of the date of the Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made, in writing, to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension.

The answer may consent to this Order. If the answer includes a request for a hearing, it shall, under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee relies and the reasons as to why the Order should not have been issued. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 2007, 72 FR 49139 (Aug. 28, 2007) and codified in pertinent part at 10 CFR Part 2, Subpart B. The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E-Filing, at least ten (10) days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html*. Information about applying for a digital ID certificate also is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*.

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance

available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737.

Participants who believe that they have good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as Social Security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, Participants are requested not to include copyrighted materials in their works.

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee may, in addition to requesting a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

Dated this 21st day of August 2008.

For the Nuclear Regulatory Commission.

**George Pangburn,**

*Acting Director, Office of Federal and State Materials and Environmental Management Programs.*

**Attachment A: List of Licensees—Redacted**

**Attachment B: Additional Security Measures for Transportation of Radioactive Material Quantities of Concern—Revision 2**

*A. General Basis Criteria*

These Additional Security Measures (ASMs) are established to delineate licensee responsibility in response to the current threat environment. The following security measures apply to Nuclear Regulatory Commission (NRC) and Agreement States licensees, who ship Radioactive Material Quantities of Concern (RAMQC) as defined in Section A.1. Shipments of RAMQC that do not fall within the NRC's jurisdiction under the Atomic Energy Act of 1954, as amended, are not subject to the provisions of these ASMs.

1. Licensees who are subject to this Order shall ensure that the requirements listed in Section B below are in effect when they ship radioactive materials that meet the following criterion:

a. Radionuclides listed in Table A, greater than or equal to the quantities specified,

b. For mixtures of radionuclides listed in Table A, the sum of the fractions of those radionuclides if greater than or equal to 1, or

c. For shipments of spent nuclear fuel containing greater than or equal to 1000 Terabecquerels (TBq) (27,000 Curies) but less than or equal to 100 grams of spent nuclear fuel.

For shipments containing greater than 100 grams of spent nuclear fuel, licensees shall follow the ASMs for ''Transportation of Spent Nuclear Fuel Greater than 100 Grams,'' dated October 3, 2002.

These ASMs supersede Safeguards Advisories SA–01–01, Rev. 1, and SA–03–02. For radioactive materials shipments containing radionuclides not addressed by this ASM guidance will be provided by Safeguards Advisory.

2. The requirements of these ASMs apply to a conveyance (i.e., the requirements apply irrespective of whether the RAMQC is shipped in a single package or in multiple packages in a single conveyance).

3. Licensees are not responsible for complying with the requirements of these ASMs if a carrier aggregates, during transport or storage incident to transport, radioactive material from two or more conveyances from separate licensees which individually do not exceed the limits of Paragraph A.1. but which together meet or exceed any of the criteria in Paragraph A.1.

4. The requirements of these ASMs only apply to RAMQC shipments using highway or rail modes of transportation. For multi-mode shipments, the requirements of these ASMs apply only to the portion of shipments that are made using highway or rail modes of transportation, as appropriate.

5. For domestic highway and rail shipments of materials in quantities greater than or equal to the quantities in Paragraph A.1, per conveyance, the licensee shall ensure that:

a. Only carriers are used which:

a. Use established package tracking systems,

b. Implement methods to assure trustworthiness and reliability of personnel associated with the transportation of RAMQC,

c. Maintain constant control and/or surveillance during transit, and

d. Have the capability for immediate communication to summon appropriate response or assistance.

b. The licensee shall verify and document that the carrier employs the measures listed above.

6. The preplanning, coordination, and tracking requirements of these ASMs are intended to reduce unnecessary delays and shipment duration and to facilitate the

transfer of the RAMQC shipment and any escorts at State borders.

7. Unless specifically noted otherwise, the requirements of these ASMs do not apply to local law enforcement agencies (LLEA) personnel performing escort duties.

8. The requirements of these ASMs apply to RAMQC domestic shipments within the United States (U.S.), imports into the U.S., or exports from the U.S. The requirements of these ASMs do not apply to transshipments through the U.S. Licensees are responsible for complying with the requirements of Section B for the highway and rail shipment portion of an import or export which occurs inside of the U.S.

For import and export RAMQC shipments, while located at the port or shipments on U.S. navigable waterways, the U.S. Coast Guard Maritime Transportation security regulations will be in effect and these ASMs are not applicable. For RAMQC shipments while located at the air freight terminal, security requirements will be performed in accordance with the Transportation Security Administration security regulations.

For import and export RAMQC shipments, the licensee shall ensure that the requirements of these ASMs are implemented after the transportation package has been loaded onto the highway or rail vehicle (except for the advance notification requirements in section B.4) and the package begins the domestic portion of the shipment to or from the U.S. port of entry [i.e., the package(s) departs for or from the port of entry facility or the airfreight terminal].

*B. Specific Requirements*

Licensees who ship RAMQC in quantities that meet the criteria of Paragraph A.1. shall ensure that carriers used have developed and implemented transportation security plans that embody the additional security measures imposed by this Order.

1. Licensee Verification

Before transfer of radioactive materials in quantities which meet the criterion of Paragraph A.1, per conveyance, the licensee shall:

a. For new recipient(s), verify that the intended recipient's license authorizes receipt of the regulated material by direct contact with the regulatory authority that issued the license (NRC Region or Agreement State) prior to transferring the material,

b. Verify the validity of unusual orders or changes (if applicable) that depart from historical patterns of ordering by existing recipients,

c. Verify the material is shipped to an address authorized in the license and that the address is valid,

d. Verify the address for a delivery to a temporary job site is valid,

e. Document the verification and validation process, and

f. Coordinate departure and arrival times with the recipient.

2. Background Investigations

a. Background investigations are intended to provide high assurance that individuals performing assigned duties associated with the transport of RAMQC, are trustworthy and reliable, and do not constitute an unreasonable risk to the common defense and security, including the potential to commit radiological sabotage.

b. For highway shipments only, the licensee shall ensure background investigations for all drivers, accompanying individuals, communications center managers, and other appropriate communications center personnel have been performed. The NRC only has the authority to impose a Federal Bureau of Investigation (FBI) criminal history check, which includes fingerprinting, on those individuals who seek access to Safeguards Information (SGI) or unescorted access to licensed material.

c. For rail shipments, the licensee shall ensure background investigations for employees filling the positions of communications center managers and other appropriate communications center personnel have been performed. The NRC only has the authority to impose a Federal Bureau of Investigation (FBI) criminal history check, which includes fingerprinting, on those individuals who seek access to SGI or unescorted access to licensed material.

d. Licensees shall document the basis for concluding that there is high assurance that individuals granted access to safeguards information or unescorted access to licensed material are trustworthy and reliable, and do not constitute an unreasonable risk for malevolent use of the regulated material. ''Access'' means that an individual could exercise some physical control over the material or device containing radioactive material.

(1) The trustworthiness, reliability, and verification of an individual's true identity shall be determined based on a background investigation. The background investigation shall address at least the past three (3) years, and as a minimum, include fingerprinting and an FBI criminal history check, verification of employment history, education, employment eligibility, and personal references. If an individual's employment has been less than the required three (3) years period, educational references may be used in lieu of employment history.

(2) Fingerprints shall be submitted and reviewed in accordance with the procedures described in Attachment C to this Order.

(3) A reviewing official that the licensee nominated and has been approved by the NRC, in accordance with NRC ''Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information,'' may continue to make trustworthiness and reliability determinations. The licensee may also nominate another individual specifically for making unescorted access determinations using the process identified in the NRC ''Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information.''

e. Licensees background investigation requirements may also be satisfied for an individual that has:

(1) Current access authorization permitting unescorted access to a power reactor facility or access to Safeguards Information,

(2) Current U.S. government-issued security clearance (based upon a national agency check, at a minimum), or

(3) Satisfactorily completed a background investigation under an NRC-approved access authorization program.

f. Individuals shall not perform assigned duties associated with the transport of RAMQC until the licensee has confirmed that a determination of trustworthiness and reliability, based on the appropriate background investigation requirements in B.2.d. and B.2.e., has been performed and documented.

3. Preplanning and Coordination

a. As part of the shipment planning process, the licensee shall ensure that appropriate security information is provided to and is coordinated with affected States through which the shipment will pass to ensure minimal delays. These discussions shall include whether a State intends to provide escorts for a shipment.

b. The licensee shall ensure States are provided with position information on a shipment (see Paragraph B.5.a), if requested and practical.

c. For shipments by highway, the licensees's coordination required in Paragraph B.3.a. shall include identification of Highway Route Controlled Quantity (HRCQ) shipments of material and safe havens.[1]

4. Notifications

a. The licensee shall ensure an advance notification of a shipment is provided, or of a series of shipments, of RAMQC to the NRC. The licensee shall ensure the notification is submitted sufficiently in advance to ensure it is received by NRC at least seven (7) days, where practicable, before the shipment commences physically within the U.S.

For written notifications, the notice should be addressed to: (10 CFR 2.390)

U.S. Nuclear Regulatory Commission, *ATTN:* Director, Division of Nuclear Security, M/S: T–4–D–8, Office of Nuclear Security and Incident Response, 11555 Rockville Pike, Rockville, MD 20852–2738.

Notifications may also be submitted electronically via e-mail to *RAMQC_SHIPMENTS@nrc.gov* or via fax to (301) 816–5151. (10 CFR 2.390)

[1] In general, a safe haven is a readily recognizable and readily accessible site at which security is present or from which, in the event of an emergency, the transport crew can notify and wait for the local law enforcement authorities (LLEA). The following criteria are used by the NRC to determine the safe haven sites and licensees should use these criteria in identifying safe havens for shipments subject to this Order:

—Close proximity to the route, i.e., readily available to the transport vehicle.

—Security from local, State, or Federal assets is present or is accessible for timely response.

—Site is well lit, has adequate parking, and can be used for emergency repair or wait for LLEA response on a 24-hours-a-day basis.

—Have additional telephone facilities should the communications system of the transport vehicle not function properly.

Possible safe haven sites include: Military installations and other Federal sites having significant security assets; secure company terminals; State weigh stations; truck stops with secure areas; and LLEA sites, including State police barracks.

b. The advance notification shall contain the following information:

(1) [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

(2) [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

(3) [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

(4) [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

(5) [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

(6) [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

(7) [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

Refer to Paragraph B.7.c. for determination of information designation of advance notifications during preplanning, coordinating, and reporting information activities.

c. The licensee shall ensure the information required by Paragraph B.4.b. is provided to each State through which the shipment will pass. The licensee shall ensure that the notification is received at least seven (7) days, where practicable, before the U.S. highway or railroad portion of a shipment commences.

d. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

5. Communications

a. (1) For highway shipments, monitor each RAMQC shipment with a telemetric position monitoring system that communicates with a communication center or is equipped with an alternative tracking system that communicates position information to a communications center.

(2) For rail shipments, monitor each RAMQC shipment with either: (i) A telemetric position monitoring system that communicates with a licensee or third-party communication center, (ii) a railroad track-side car location monitoring systems tracking system that relays a car's position to a railroad communications center (which can provide position information to any separate licensee communications center per Paragraph B.5.b), or (iii) alternate licensee monitoring system. Additionally, licensees may use a railroad communications center to monitor the rail portion of a shipment, in lieu of using a separate communications center.

b. (1) For highway shipments, provide for a communication center that has the capability to continuously and actively monitor in-progress shipments to ensure positive confirmation of the location, status, and control over the shipment and implement pre-planned procedures in response to deviations from the authorized route or notification of actual, attempted, or suspicious activities related to theft, loss, diversion, or radiological sabotage of a shipment. These procedures shall include identification of the designated LLEA contact(s) along the shipment route.

(2) For rail shipments, provide for a communication center that has the capability to periodically monitor in-progress shipments to ensure positive confirmation of the location of the shipment and implement pre-planned procedures in response to notification of actual, attempted, or suspicious activities related to theft, loss, diversion, or radiological sabotage of a shipment. These procedures shall include identification of the designated LLEA contact(s) along the shipment route. Licensees may use a railroad communications center in lieu of establishing a separate communications center.

c. (1) For highway shipments, ensure that a two-way telecommunication capability is available for the transport and any escort vehicles allowing them to communicate with each other with the communications center, and with designated LLEAs along the route. The communications center must be capable of contacting the designated authorities along the shipment route.

(2) For rail shipments, ensure that a two-way telecommunication capability is available between the train and the communications center and between any escort vehicles and the communications center. The communications center must be capable of contacting the designated authorities along the shipment route.

d. A licensee may utilize a carrier or third-party communications center in lieu of establishing such a facility itself. A commercial communications center must have the capabilities, necessary procedures, training, and personnel background investigations to meet the applicable requirements of these ASMs.

e. (1) For highway shipments, provide a backup means for the transport and any escort vehicle to communicate with the communications center, using a diverse method not subject to the same interference factors as the primary capability selected for compliance with Paragraph B.5.c. (e.g., two-way radio or portable telephone).

(2) For rail shipments, provide a backup means for the train to talk with the communications center, using a diverse method not subject to the same interference factors as the primary capability selected for compliance with Paragraph B.5.c. (e.g., two-way radio or portable telephone).

f. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

(1) Not later than one hour after the time when, through the course of the investigation, it is determined the shipment is lost or stolen, the licensee shall ensure the appropriate local law enforcement agency, the NRC Operations Center at (301) 816–5100, and the appropriate Agreement State regulatory agency, if any, are notified.

(2) If after 24 hours of initiating the investigation, the radioactive material cannot be located, licensee shall ensure the NRC Operations Center and, for Agreement State licensees, the appropriate Agreement State regulatory agency are immediately notified.

g. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

6. Drivers and Accompanying Individuals

a. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

b. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

c. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

d. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

7. Procedures, Training, and Control of Information

a. (1) For highway shipments the licensee shall ensure that normal and contingency procedures have been developed, including, for example: Notifications, communications protocols, loss of communications, and response to actual, attempted, or suspicious activities related to theft, loss, diversion, or radiological sabotage of a shipment. Communication protocols must include a strategy for use of authentication and duress codes, provision for refueling or other stops, detours, and locations where communication is expected to be temporarily lost.

(2) For rail shipments, the licensee shall ensure that normal and contingency procedures have been developed, including, for example: notifications, communications protocols, loss of communications, and response to actual, attempted, or suspicious activities related to theft, loss, diversion, or radiological sabotage of a shipment. Communication protocols must include a strategy for use of authentication and duress codes, provision for stops, and locations where communication is expected to be temporarily lost.

b. (1) For highway shipments, the licensee shall ensure that personnel, including drivers, accompanying individuals, responsible communication center managers, and other appropriate communication center personnel are trained in and understand the normal and contingency procedures.

(2) For rail shipments, the licensee shall ensure that personnel, including the appropriate train crew members and responsible railroad communication center managers, and other appropriate railroad communication center personnel are trained in and understand the normal and contingency procedures.

c. Information to be protected as Safeguards Information—Modified Handling, shall include, but is not limited to:

(1) Integrated transportation physical security plans.

(2) Schedules and itineraries for shipments. For shipments that are not inherently self disclosing, schedule and itineraries information may be decontrolled 2 days after a shipment is completed. For shipments that are inherently self disclosing, schedule may be released as necessary after departure.

(3) Details of alarm and communications systems, communication protocols and duress codes, and security contingency response procedures.

(4) Arrangements with designated LLEA (i.e., Federal, State Police, and/or local police

departments) and information on whether a State intends to provide armed escorts for a shipment.

For preplanning; coordinating, for example with States' organizations and carriers; reporting information as described in B.1., B.4., and B.5. related to shipments of radioactive material, and the radionuclides identified in Paragraph A.1, the licensee shall ensure the information is protected at least as sensitive information (for example, proprietary or business financial information). Licensees shall ensure access is restricted to this information to those licensee and contractor personnel with a need to know. Licensees shall ensure all parties receiving this information protect it similarly. Information may be transmitted either in writing or electronically and shall be marked as ''Sensitive Information—Not for Public Disclosure.''

*C. Implementation Schedule*

1. Licensees shall implement the requirements of this ASM within 180 days of the date of issuance of the Order or before the first shipment of RAMQC, whichever is sooner.

TABLE A—RADIONUCLIDES OF CONCERN

| Radionuclide | Quantity of concern (TBq) threshold limit | Quantity of concern (Ci) information only—rounded after conversion |
|---|---|---|
| Am-241 | 60 | 1,600 |
| Am-241/Be | 60 | 1,600 |
| Cf-252 | 20 | 540 |
| Cm-244 | 50 | 1,400 |
| Co-60 | 30 | 810 |
| Cs-137 | 100 | 2,700 |
| Gd-153 | 1,000 | 27,000 |
| Ir-192 | 80 | 2,200 |
| Pm-147 | 40,000 | 1,100,000 |
| Pu-238 | 60 | 1,600 |
| Pu-239/Be | 60 | 1,600 |
| Ra-226 [1] | 40 | 1,100 |
| Se-75 | 200 | 5,400 |
| Sr-90 (Y-90) | 1,000 | 27,000 |
| Tm-170 | 20,000 | 540,000 |
| Yb-169 | 300 | 8,100 |

[1] The Atomic Energy Act, as amended by the Energy Policy Act of 2005, authorizes NRC to regulate Ra-226 and NRC is in the process of amending its regulations for discrete sources of Ra-226.

**Notes:**

1. The regulatory standard values to be used are given in Terabecquerels (TBq). Curie (Ci) values are provided for practical usefulness only and are rounded after conversion.

2. If several radionuclides are present, the sum of the fractions of the activity of each radionuclide must be determined. Using the equation below calculate the ratio by inserting the actual activity of each radionuclide as the numerator and the corresponding activity limit in Table A as the denominator. Ensure the numerator and the denominator are in Terabecquerels.

$R_1$ = activity for radionuclide number 1
$R_2$ = activity for radionuclide number 2
$R_3$, $R_4$, $R_5$.....etc.
$AR_1$ = activity limit for radionuclide number 1
$AR_2$ = activity limit for radionuclide number 2
$AR_3$, $AR_4$, $AR_5$.....etc.

$$\frac{R_1}{AR_1} + \frac{R_2}{AR_2} + \frac{R_3}{AR_3} + \frac{R_n}{AR_n} \geq 1$$

**Attachment C: Requirements for Fingerprinting and Criminal History Checks of Individuals When Licensee's Reviewing Official Is Determining Access to Safeguards Information or Unescorted Access to Radioactive Materials**

*General Requirements*

Licensees shall comply with the following requirements of this attachment.

1. Each Licensee subject to the provisions of this attachment shall fingerprint each individual who is seeking or permitted access to safeguards information (SGI) or unescorted access to RAMQC. The Licensee shall review and use the information received from the Federal Bureau of Investigation (FBI) and ensure that the provisions contained in this Order and this attachment are satisfied.

2. The Licensee shall notify each affected individual that the fingerprints will be used to secure a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the ''Right to Correct and Complete Information'' section of this attachment.

3. Fingerprints for access to SGI or unescorted access need not be taken if an employed individual (e.g., a Licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.59 for access to SGI or 10 CFR 73.61 for unescorted access, has a favorably-decided U.S. Government criminal history check within the last five (5) years, or has an active federal security clearance. Written confirmation from the Agency/employer which granted the federal security clearance or reviewed the criminal history check must be provided for either of the latter two cases. The Licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires access to SGI or unescorted access to radioactive materials associated with the Licensee's activities.

4. All fingerprints obtained by the Licensee pursuant to this Order must be submitted to the Commission for transmission to the FBI.

5. The Licensee shall review the information received from the FBI and consider it, in conjunction with the trustworthy and reliability requirements of this Order, in making a determination whether to grant, or continue to allow, access to SGI or unescorted access to radioactive materials.

6. The Licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for access to SGI or unescorted access to RAMQC.

7. The Licensee shall document the basis for its determination whether to grant, or continue to allow, access to SGI or unescorted access to RAMQC.

*Prohibitions*

A Licensee shall not base a final determination to deny an individual access to radioactive materials solely on the basis of

information received from the FBI involving: an arrest more than one (1) year old for which there is no information of the disposition of the case, or an arrest that resulted in dismissal of the charge or an acquittal.

A Licensee shall not use information received from a criminal history check obtained pursuant to this Order in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the Licensee use the information in any way which would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

*Procedures for Processing Fingerprint Checks*

For the purpose of complying with this Order, Licensees shall, using an appropriate method listed in 10 CFR 73.4, submit to the NRC's Division of Facilities and Security, Mail Stop T–6E46, one completed, legible standard fingerprint card (Form FD–258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records for each individual seeking access to SGI or unescorted access to RAMQC, to the Director of the Division of Facilities and Security, marked for the attention of the Division's Criminal History Check Section. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling (301) 415–7232, or by e-mail to *forms.resource@nrc.gov.* Practicable alternative formats are set forth in 10 CFR 73.4. The Licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards due to illegible or incomplete cards.

The NRC will review submitted fingerprint cards for completeness. Any Form FD–258 fingerprint record containing omissions or evident errors will be returned to the Licensee for corrections. The fee for processing fingerprint checks includes one re-submission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free re-submission must have the FBI Transaction Control Number reflected on the re-submission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

Fees for processing fingerprint checks are due upon application (Note: Other fees may apply to obtain fingerprints from your local law enforcement agency). Licensees should submit payments electronically via *http://www.pay.gov*. Payments through Pay.gov can be made directly from the Licensee's credit/debit card. Licensees will need to establish a password and user ID before they can access Pay.gov. To establish an account, Licensee requests must be sent to *paygo@nrc.gov*. The request must include the Licensee's name, address, point of contact, e-mail address, and phone number. The NRC will forward each request to Pay.gov and someone from Pay.gov will contact the Licensee with all of the necessary account information. Licensees shall make payments for processing before submitting applications to the NRC. Combined payment for multiple applications is acceptable. Licensees shall include the Pay.gov payment receipt(s) along with the application(s). For additional guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at (301) 415–7404.

Alternatively, licensees may also submit payment with the application for processing fingerprints by corporate check, certified check, cashier's check, or money order, made payable to ''U.S. NRC.'' Combined payment for multiple applications is acceptable.

The application fee (currently $36) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a Licensee, and an NRC processing fee, which covers administrative costs associated with NRC handling of Licensee fingerprint submissions. The Commission will directly notify Licensees subject to this regulation of any fee changes.

The Commission will forward to the submitting Licensee all data received from the FBI as a result of the Licensee's application(s) for criminal history checks, including the FBI fingerprint record.

*Right to Correct and Complete Information*

Prior to any final adverse determination, the Licensee shall make available to the individual the contents of any criminal records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the Licensee for a period of one (1) year from the date of the notification.

If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The Licensee must provide at least ten (10) days for an individual to initiate an action challenging the results of an FBI criminal history records check after the record is made available for his/her review. The Licensee may make a final determination on access to SGI or unescorted access RAMQC based upon the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination on access to SGI or unescorted access to RAMQC, the Licensee shall provide the individual its documented basis for denial. Access to SGI or unescorted access to RAMQC shall not be granted to an individual during the review process.

*Protection of Information*

1. Each Licensee who obtains a criminal history record on an individual pursuant to this Order shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

2. The Licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining access to SGI or unescorted access to RAMQC. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have a need-to-know.

3. The personal information obtained on an individual from a criminal history record check may be transferred to another Licensee if the Licensee holding the criminal history record receives the individual's written request to re-disseminate the information contained in his/her file, and the gaining Licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

4. The Licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

5. The Licensee shall retain all fingerprint and criminal history records received from the FBI, or a copy if the individual's file has been transferred, for three (3) years after termination of employment or denial to access SGI or unescorted access to RAMQC. After the required three (3) year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole or in part.

[FR Doc. E8–20119 Filed 8–28–08; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–305]**

## Dominion Energy Kewaunee, Inc.; Notice of Receipt and Availability of Application for Renewal of Kewaunee Power Station Facility Operating License No. DPR–43 for an Additional 20-Year Period

The U.S. Nuclear Regulatory Commission (NRC or Commission) has received an application, dated August 12, 2008, from Dominion Energy Kewaunee, Inc., filed pursuant to Section 104b of the Atomic Energy Act of 1954, as amended, and Title 10 of the

Code of Federal Regulations Part 54 (10 CFR Part 54), to renew the operating license for the Kewaunee Power Station (KPS). Renewal of the license would authorize the applicant to operate the facility for an additional 20-year period beyond the period specified in the current operating license. The current operating license for KPS (DPR–43), expires on December 21, 2013. Kewaunee Power Station is a Pressurized-Water Reactor designed by Westinghouse that is located near Kewaunee, WI. The acceptability of the tendered application for docketing, and other matters including an opportunity to request a hearing, will be the subject of subsequent **Federal Register** notices.

Copies of the application are available to the public at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852 or through the Internet from the NRC's Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room under Accession Number ML082341038. The ADAMS Public Electronic Reading Room is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html*. In addition, the application will be available at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html*. Persons who do not have access to the internet or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR Reference staff at 1–800–397–4209, extension 4737, or by e-mail to *pdr@nrc.gov*.

A copy of the license renewal application for the Kewaunee Power Station is also available to local residents near the site at the Kewaunee Public Library, 822 Juneau St., Kewaunee, WI 54216.

Dated at Rockville, Maryland, this 25th day of August 2008.

For the Nuclear Regulatory Commission.

**Brian E. Holian,**

*Director, Division of License Renewal, Office of Nuclear Reactor Regulation.*

[FR Doc. E8–20117 Filed 8–28–08; 8:45 am]

**BILLING CODE 7590–01–P**

## PENSION BENEFIT GUARANTY CORPORATION

### Privacy Act of 1974; System of Records

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of new system of records PBGC—16, Online Employee Directory—PBGC.

**SUMMARY:** The Pension Benefit Guaranty Corporation (PBGC) is proposing to establish a new system of records, PBGC—16, Online Employee Directory—PBGC, subject to the Privacy Act of 1974, *as amended*. The new system of records will be used by PBGC employees and employees of PBGC's contractors to identify other PBGC employees by name, organizational component or title, supervisor, or area of expertise, and to access contact information for PBGC employees.

**DATES:** Comments on the new system of records and proposed routine uses must be received on or before September 29, 2008. The new system of records will become effective on October 8, 2008 without further notice, unless comments result in a contrary determination and a notice is published to that effect.

**ADDRESSES:** Comments may be submitted by any of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the Web site instructions for submitting comments.
2. *E-mail: reg.comments@pbgc.gov*.
3. *Fax:* 202–326–4224.
4. *Mail or Hand Delivery:* Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026. Comments received, including personal information provided, will be posted to *http://www.pbgc.gov*. Copies of comments may also be obtained by writing to Disclosure Division, Office of General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.)

**FOR FURTHER INFORMATION CONTACT:** Sarah Humphrey, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4400 (extension 3600); or Bruce Campbell, Attorney, Office of the General Counsel; 202–326–4400 (extension 3672). (For TTY/TDD users, call the federal relay service toll-free at (800) 877–8339 and ask to be connected to 202–326–4400 (extension 3600) or 202–326–4400 (extension 3672).).

**SUPPLEMENTARY INFORMATION:** To improve communications and collaboration among its staff, PBGC is proposing to establish a new system of records subject to the Privacy Act (5 U.S.C. 552a) that will make it easier for PBGC employees and employees of PBGC's contractors to identify other PBGC employees by name, organizational component or title, supervisor, or area of expertise, and to access contact information. The Online Employee Directory (''OED'') will be accessible to PBGC employees and employees of PBGC's contractors via PBGC's intranet and allow users to search and retrieve information about PBGC employees by first, middle, or last name, organizational component and title, supervisor's name, or area of expertise. The OED will include contact information, *i.e.*, each employee's PBGC mailing address, room or workstation number, telephone number and extension, and electronic mail address. The OED will also include the photograph of each employee from the PBGC-issued photo identification badge that PBGC employees must wear in PBGC facilities. An employee may opt out of having their photograph displayed in the OED.

PBGC general routine uses G1 through G8 will apply to this system of records. These routine uses were published as the PBGC's Prefatory Statement of General Routine Uses at 60 FR 57462, 57563 (Nov. 15, 1995). PBGC has determined that these routine uses are ''appropriate and necessary for the efficient conduct of government and in the best interest of both the individual and the public.'' *See Privacy Act Implementation, Guidelines and Responsibilities*, Office of Management and Budget, 40 FR 28948, 28953 (1975).

Issued in Washington, DC, this 25th day of August 2008.

**Charles E. F. Millard,**

*Director, Pension Benefit Guaranty Corporation.*

### PBGC–16

**SYSTEM NAME:**

PBGC–16, Online Employee Directory—PBGC.

**SECURITY CLASSIFICATION:**

Not applicable.

**SYSTEM LOCATION:**

Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

PBGC employees.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Employee's name, photograph, organizational component and title, supervisor's name, area of expertise, PBGC mailing address, room or workstation number, telephone number and extension, and electronic mail address.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

29 U.S.C. 1302.

**PURPOSE(S):**

This system of records is used by PBGC employees and employees of PBGC's contractors to identify other PBGC employees by name, organizational component or title, supervisor, or area of expertise, and to access contact information for PBGC employees.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

PBGC General Routine Uses G1 through G8 apply to this system of records (*See* Prefatory Statement of General Routine Uses, 60 FR 57462, 57563 (1995)).

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

Not applicable.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

Storage:

Records are maintained in electronic format in database that is available to authorized PBGC employees and employees of PBGC's contractors who have been granted access to PBGC's intranet.

**RETRIEVABILITY:**

Records are retrieved by name, organizational component or title, supervisor, or area of expertise.

**SAFEGUARDS:**

The PBGC has adopted appropriate administrative, technical, and physical controls to protect the security, integrity, and availability of information maintained in electronic format, and to assure that records are not disclosed to or accessed by anyone who does not have a need-to-know to perform official duties.

**RETENTION AND DISPOSAL:**

Records are maintained until the subject leaves PBGC employment.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Communications and Public Affairs Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026.

**NOTIFICATION PROCEDURE:**

Procedures are detailed in PBGC regulations: 29 CFR part 4902.

**RECORD ACCESS PROCEDURES:**

Same as notification procedures.

**CONTESTING RECORD PROCEDURES:**

Same as notification procedure.

**RECORD SOURCE CATEGORIES:**

Subject individual and PBGC personnel records.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. E8–20178 Filed 8–28–08; 8:45 am]

BILLING CODE 7709–01–P

## OFFICE OF PERSONNEL MANAGEMENT

### Excepted Service

**AGENCY:** U.S. Office of Personnel Management (OPM).

**ACTION:** Notice.

**SUMMARY:** This gives notice of OPM decisions granting authority to make appointments under Schedules A, B, and C in the excepted service as required by 5 CFR 6.6 and 213.103.

**FOR FURTHER INFORMATION CONTACT:** M. Lamary, Group Manager, Executive Resources Services Group, Center for Human Resources, Division for Human Capital Leadership and Merit System Accountability, 202–606–2246.

**SUPPLEMENTARY INFORMATION:** Appearing in the listing below are the individual authorities established under Schedules A, B, and C between June 1, 2008, and June 30, 2008. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 is published each year.

### Schedule A

No Schedule A appointments were approved for June 2008.

### Schedule B

No Schedule B appointments were approved for June 2008.

### Schedule C

The following Schedule C appointments were approved during June 2008.

*Section 213.3303 Executive Office of the President*

Office of National Drug Control Policy

QQGS80010 Legislative Analyst to the Associate Director, Office of Legislative Affairs. Effective June 6, 2008.

*Section 213.3304 Department of State*

DSGS69746 Public Affairs Specialist to the Principal Deputy Assistant Secretary. Effective June 6, 2008.

DSGS69749 Staff Assistant to the Director, Policy Planning Staff. Effective June 25, 2008.

DSGS69747 Staff Assistant to the Under Secretary for Global Affairs. Effective June 26, 2008.

DSGS69748 Special Assistant to the Counselor. Effective June 26, 2008.

*Section 213.3305 Department of the Treasury*

DYGS00494 Special Assistant to the Director of the Mint. Effective June 13, 2008.

DYGS00424 Senior Advisor to the Assistant Secretary (Economic Policy). Effective June 19, 2008.

DYGS00420 Special Assistant to the Deputy Assistant Secretary for Legislative Affairs (Banking and Finance). Effective June 20, 2008.

*Section 213.3306 Department of Defense*

DDGS17160 Special Assistant/Senior Advisor to the Under Secretary of Defense (Comptroller). Effective June 3, 2008.

DDGS17159 Special Assistant to the Assistant Secretary of Defense (Legislative Affairs). Effective June 6, 2008.

DDGS17163 Speechwriter for the Special Assistant to the Deputy Secretary of Defense. Effective June 26, 2008.

*Section 213.3308 Department of the Navy*

DNGS08166 Staff Assistant to the Deputy Under Secretary of the Navy. Effective June 4, 2008.

*Section 213.3310 Department of Justice*

DJGS00109 Associate Director to the Director. Effective June 10, 2008.

DJGS00136 Senior Policy Advisor to the Director of the Violence Against Women Office. Effective June 17, 2008.

DJGS00093 Deputy White House Liaison to the White House Liaison. Effective June 20, 2008.

DJGS00113 Senior Counsel to the Director, Community Relations Service. Effective June 24, 2008.

*Section 213.3311 Department of Homeland Security*

DMGS00752 Special Assistant to the Director of Faith Based and Community Initiatives. Effective June 6, 2008.

DMGS00754 Governor and Homeland Security Advisors Coordinator to the Assistant Secretary for Intergovernmental Programs. Effective June 13, 2008.

DMGS00755 Confidential Assistant to the Counselor to the Deputy Secretary. Effective June 13, 2008.

DMGS00753 Senior Policy Advisor to the Assistant Secretary for Infrastructure Protection. Effective June 17, 2008.
DMGS00756 Advance Representative to the Director of Scheduling and Advance. Effective June 17, 2008.
DMGS00705 White House Liaison to the Chief of Staff. Effective June 20, 2008.
DMGS00757 Director of Intergovernmental Affairs to the Assistant Secretary for Intergovernmental Affairs. Effective June 26, 2008.
DMGS00759 Advance Representative to the Director of Scheduling and Advance. Effective June 26, 2008.
DMGS00761 Associate Director for Public Liaison to the Chief of Staff to the Coordinator. Effective June 26, 2008.
DMGS00760 Director of Intergovernmental Affairs to the Director of External Affairs and Communications. Effective June 27, 2008.

*Section 213.3312 Department of the Interior*

DIGS01125 Senior Advisor to the Chief of Staff. Effective June 3, 2008.
DIGS01126 Senior Counsel and Special Assistant to the Solicitor to the Deputy Solicitor. Effective June 10, 2008.
DIGS01127 Deputy Director, Office of Communications to the Director, Office of Communications. Effective June 12, 2008.

*Section 213.3313 Department of Agriculture*

DAGS00942 Staff Assistant to the Assistant Secretary for Congressional Relations. Effective June 12, 2008.

*Section 213.3314 Department of Commerce*

DCGS00030 Special Assistant to the National Director, Minority Business Development Agency. Effective June 6, 2008.
DCGS00191 Legislative Counsel to the Deputy General Counsel. Effective June 6, 2008.
DCGS00199 Legislative Affairs Specialist to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective June 6, 2008.
DCGS60291 Public Affairs Specialist to the Director of Public Affairs. Effective June 27, 2008.

*Section 213.3315 Department of Labor*

DLGS60144 Special Assistant to the Director of Scheduling. Effective June 11, 2008.
DLGS60179 Special Assistant to the Deputy Wage and Hour Administrator. Effective June 13, 2008.
DLGS60250 Deputy Director of Scheduling to the Director of Scheduling. Effective June 13, 2008.
DLGS60142 Staff Assistant to the Director of Scheduling. Effective June 24, 2008.
DLGS60203 Special Assistant to the Assistant Secretary for Veterans Employment and Training. Effective June 27, 2008.

*Section 213.3316 Department of Health and Human Services*

DHGS60169 Special Assistant to the Assistant Secretary for Public Affairs. Effective June 9, 2008.
DHGS60008 Senior Advisor to the Assistant Secretary for Children and Families. Effective June 17, 2008.
DHGS60073 Special Assistant (Center for Faith-Based and Community Initiatives) to the Director, Center for Faith Based and Community Initiatives. Effective June 17, 2008.

*Section 213.3317 Department of Education*

DBGS00669 Senior Advisor to the Assistant Secretary, Office of Communications and Outreach. Effective June 9, 2008.
DBGS00270 Confidential Assistant (White House Liaison) to the White House Liaison. Effective June 13, 2008.
DBGS00496 Special Assistant to the Deputy Assistant Secretary for Process Improvement. Effective June 20, 2008.
DBGS00560 Chief of Staff to the Assistant Secretary for Planning, Evaluation, and Policy Development. Effective June 20, 2008.
DBGS00570 Confidential Assistant to the Assistant Secretary, Office of Communications and Outreach. Effective June 20, 2008.
DBGS00670 Deputy Director, (White House Initiative on the Educational Excellence for Hispanic Americans) to the Director, White House Initiative on Hispanic Education. Effective June 25, 2008.

*Section 213.3318 Environmental Protection Agency*

EPGS05006 Speech Writer to the Associate Administrator for Public Affairs. Effective June 11, 2008.
EPGS08010 Special Assistant to the Associate Administrator for Congressional and Intergovernmental Relations. Effective June 11, 2008.
EPGS05018 Deputy Associate Administrator for Office of Congressional Affairs to the Associate Administrator for Congressional and Intergovernmental Relations. Effective June 27, 2008.

*Section 213.3323 Overseas Private Investment Corporation*

PQGS08015 Research Specialist to the Chief of Staff. Effective June 03, 2008.

*Section 213.3325 United States Tax Court*

JCGS60086 Trial Clerk to the Chief Judge. Effective June 09, 2008.

*Section 213.3327 Department of Veterans Affairs*

DVGS60014 Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs. Effective June 17, 2008.

*Section 213.3331 Department of Energy*

DEGS00658 Policy Advisor to the Assistant Secretary for Policy and International Affairs. Effective June 6, 2008.
DEGS00662 Deputy Assistant Secretary for Environmental Management and National Security to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective June 17, 2008.
DEGS00664 Deputy Director to the Director, Office of Scheduling and Advance. Effective June 20, 2008.
DEGS00665 Deputy Press Secretary to the Director, Public Affairs. Effective June 26, 2008.
DEGS00663 Senior Advisor to the Assistant Secretary for Fossil Energy. Effective June 27, 2008.
DEGS00666 Senior Advisor to the Assistant Secretary of Energy (Nuclear Energy). Effective June 27, 2008.
DEGS00667 Energy Operations Coordinator to the Assistant Secretary (Electricity Delivery and Energy Reliability). Effective June 27, 2008.

*Section 213.3337 General Services Administration*

GSGS00150 Senior Advisor to the Regional Administrator National Capital Region. Effective June 03, 2008.
GSGS00167 Confidential Assistant to the Chief of Staff. Effective June 18, 2008.

*Section 213.3346 National Aeronautics and Space*

NNGS00183 Deputy Press Secretary/ Public Affairs Specialist to the Public Affairs Specialist. Effective June 6, 2008.

*Section 213.3384 Department of Housing and Urban Development*

DUGS60336 Special Assistant to the Secretary to the Deputy Secretary, Housing and Urban Development. Effective June 6, 2008.

DUGS60263 Advisor to the Secretary, Housing and Urban Development. Effective June 9, 2008.

DUGS60352 Regional Director to the Assistant Deputy Secretary for Field Policy and Management. Effective June 24, 2008.

DUGS60460 Assistant to the Secretary and White House Liaison to the Chief of Staff. Effective June 27, 2008.

DUGS60490 Special Policy Advisor to the Chief of Staff. Effective June 27, 2008.

*Section 213.3394 Department of Transportation*

DTGS60117 Special Assistant to the Secretary. Effective June 3, 2008.

**Authority:** 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

**Howard C. Weizmann,**

*Deputy Director.*

[FR Doc. E8–20112 Filed 8–28–08; 8:45 am]

BILLING CODE 6325–39–P

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17Ad–17; OMB Control No. 3235–0469; SEC File No. 270–412.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

• Rule 17Ad–17 Transfer Agents' Obligation to Search for Lost Securityholders.

Rule 17Ad–17 (17 CFR 240.17Ad–17) requires approximately 608 registered transfer agents to conduct searches using third party database vendors to attempt to locate lost securityholders. The staff estimates that the average number of hours necessary for each transfer agent to comply with Rule 17Ad–17 is five hours annually. The total burden is approximately 3,040 hours annually for all transfer agents.[1] The cost of compliance for each individual transfer agent depends on the number of lost accounts for which it is responsible. Based on information received from transfer agents, we estimate that the annual cost industry wide is approximately $3.3 million.

The retention period for the recordkeeping requirement under Rule 17Ad–17 is three years. The recordkeeping requirement under Rule 17Ad–17 is mandatory to assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule. This rule does not involve the collection of confidential information. Please note 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 control number.

Comments should be directed to (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *Alexander_T._Hunt@omb.eop.gov*; and (ii) Lewis W. Walker, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted within 30 days of this notice.

Dated: August 25, 2008.

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8–20065 Filed 8–28–08; 8:45 am]

BILLING CODE 8010–01–P

[1] The 60-day notice for this Paperwork Reduction Act extension referred to a burden of 2,432 hours. See 73 FR 32750 (Jun. 10, 2008). This burden was incorrect. The correct burden is 3,040 hours.

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 28364; 812–13528]**

### Aberdeen Asset Management Inc. and Aberdeen Funds; Notice of Application

August 25, 2008.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements.

**SUMMARY OF APPLICATION:** Applicants request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval and would grant relief from certain disclosure requirements.

**APPLICANTS:** Aberdeen Asset Management Inc. (the ''Adviser'') and Aberdeen Funds (the ''Trust'').

**FILING DATES:** The application was filed on May 8, 2008. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 19, 2008, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. *Applicants:* Aberdeen Asset Management Inc., 1735 Market Street, 37th Floor, Philadelphia, PA 19103; Aberdeen Funds, 5 Tower Bridge, 300 Barr Harbor Drive, Suite 300, West Conshohocken, PA 19428.

**FOR FURTHER INFORMATION CONTACT:** Emerson S. Davis, Senior Counsel, at (202) 551–6868, or Julia Kim Gilmer, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549–1520 (telephone (202) 551–5850).

*Applicants' Representations:*

1. The Trust, a Delaware statutory trust, is registered under the Act as an open-end management investment company and offers, or will offer, shares in 26 series each with separate investment objectives, policies and restrictions (each a ''Fund'' and collectively, the ''Funds'').[1] The Adviser

[1] Applicants also request relief with respect to future series of the Trust and any other existing or future registered open-end management investment company or series thereof that: (a) Is advised by the

Continued

is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') and provides investment management services to the Funds pursuant to an investment management agreement (''Advisory Agreement'') with the Trust. The Advisory Agreement has been approved by the Trust's board of trustees (the ''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Trust or the Adviser (''Independent Trustees'') and by the initial shareholder of each Fund.

2. Under the terms of the Advisory Agreement, the Adviser is authorized to manage the investment and reinvestment of the assets of each Fund and to continuously review, supervise and administer the investment program of each Fund. The Advisory Agreement also authorizes the Adviser, subject to Board approval, to enter into investment sub-advisory agreements (''Subadvisory Agreements'') with one or more subadvisers (''Subadvisers''). Each Subadviser is, and will be, registered as an investment adviser under the Advisers Act. The Adviser evaluates, allocates assets to and oversees the Subadvisers and makes recommendations about their hiring, termination and replacement to the Board. Subadvisers recommended to the Board by the Adviser have been or will be selected and approved by the Board, including a majority of the Independent Trustees. Each Subadviser has discretionary authority to invest the assets or a portion of the assets of a particular Fund. The Adviser compensates each Subadviser out of the fees paid to the Adviser under the Advisory Agreement.

3. Applicants request an order to permit the Adviser, subject to Board approval, to enter into and materially amend Subadvisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Subadviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Trust, a Fund or of the Adviser, other than by reason of serving as a Subadviser to one or more of the Funds (''Affiliated Subadviser'').

4. Applicants also request an exemption from the various disclosure provisions described below that may require a Fund to disclose fees paid by the Adviser to each Subadviser. An exemption is requested to permit the Trust to disclose for each Fund (as both a dollar amount and as a percentage of each Fund's net assets): (a) The aggregate fees paid to the Adviser and any Affiliated Subadvisers; and (b) the aggregate fees paid to Subadvisers other than Affiliated Subadvisers (collectively, ''Aggregate Fee Disclosure''). For any Fund that employs an Affiliated Subadviser, the Fund will provide separate disclosure of any fees paid to the Affiliated Subadviser.

*Applicants' Legal Analysis:*

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 14(a)(3) of Form N–1A requires disclosure of the method and amount of the investment adviser's compensation.

3. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 (''1934 Act''). Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fees,'' a description of the ''terms of the contract to be acted upon,'' and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees. Form N–SAR is the semi-annual report filed with the Commission by registered investment companies. Item 48 of Form N–SAR requires investment companies to disclose the rate schedule for fees paid to their investment advisers, including the Subadvisers.

4. Regulation S–X sets forth the requirements for financial statements required to be included as part of investment company registration statements and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require that investment companies include in their financial statements information about investment advisory fees.

5. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that their requested relief meets this standard for the reasons discussed below.

6. Applicants assert that the shareholders are relying on the Adviser's experience to select one or more Subadvisers best suited to achieve a Fund's investment objectives. Applicants assert that, from the perspective of the investor, the role of the Subadvisers is comparable to that of the individual portfolio managers employed by traditional investment company advisory firms. Applicants state that requiring shareholder approval of each Subadvisory Agreement would impose costs and unnecessary delays on the Funds, and may preclude the Adviser from acting promptly in a manner considered advisable by the Board. Applicants note that the Advisory Agreement and any Subadvisory Agreement with an Affiliated Subadviser will remain subject to section 15(a) of the Act and rule 18f–2 under the Act.

7. Applicants assert that some Subadvisers use a ''posted'' rate schedule to set their fees. Applicants state that while Subadvisers are willing to negotiate fees that are lower than those posted on the schedule, they are reluctant to do so where the fees are disclosed to other prospective and existing customers. Applicants submit that the requested relief will allow the Adviser to negotiate more effectively with each Subadviser.

*Applicants' Conditions:*

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the order requested in the application, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act, or, in the case of a Fund whose public shareholders purchase

Adviser or a person controlling, controlled by, or under common control with the Adviser; (b) uses the manager of managers structure described in the application; and (c) complies with the terms and conditions of the application (included in the term ''Funds''). The only existing registered open-end management investment company that currently intends to rely on the requested order is named as an applicant. The term ''Adviser'' includes (a) the Adviser, and (b) any entity controlling, controlled by, or under common control with the Adviser. If the name of any Fund contains the name of a Subadviser (as defined below), the name of the Adviser will precede the name of the Subadviser.

shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder before offering that Fund's shares to the public.

2. The prospectus for each Fund will disclose the existence, substance, and effect of any order granted pursuant to the application. Each Fund will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Adviser has ultimate responsibility (subject to oversight by the Board) to oversee the Subadvisers and recommend their hiring, termination, and replacement.

3. Within 90 days of the hiring of a new Subadviser, the affected Fund shareholders will be furnished all information about the new Subadviser that would be included in a proxy statement, except as modified to permit Aggregate Fee Disclosure. This information will include Aggregate Fee Disclosure and any change in such disclosure caused by the addition of the new Subadviser. To meet this obligation, the Fund will provide shareholders within 90 days of the hiring of a new Subadviser with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the 1934 Act, except as modified by the order to permit Aggregate Fee Disclosure.

4. The Adviser will not enter into a Subadvisory Agreement with any Affiliated Subadviser without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. At all times, at least a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

6. Independent legal counsel, as defined in rule 0–1(a)(6) under the Act, will be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the then-existing Independent Trustees.

7. Whenever a Subadviser change is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the applicable Board minutes, that such change is in the best interests of the Fund and its shareholders, and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

8. Whenever a Subadviser is hired or terminated, the Adviser will provide the Board with information showing the expected impact on the profitability of the Adviser.

9. The Adviser will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of the Fund's assets, and, subject to review and approval of the Board, will: (a) Set each Fund's overall investment strategies; (b) evaluate, select and recommend Subadvisers to manage all or a part of a Fund's assets; (c) allocate and, when appropriate, reallocate a Fund's assets among one or more Subadvisers; (d) monitor and evaluate the performance of Subadvisers; and (e) implement procedures reasonably designed to ensure that the Subadvisers comply with the relevant Fund's investment objective, policies and restrictions.

10. The Adviser will provide the Board, no less frequently than quarterly, with information about the profitability of the Adviser on a per-Fund basis. The information will reflect the impact on profitability of the hiring or termination of any Subadviser during the applicable quarter.

11. No trustee or officer of the Trust or a Fund, or director or officer of the Adviser, will own, directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person), any interest in a Subadviser, except for: (a) Ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser, or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of any publicly traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

12. Each Fund will disclose in its registration statement the Aggregate Fee Disclosure.

13. The requested order will expire on the effective date of rule 15a–5 under the Act, if adopted.

For the Commission, by the Division of Investment Management, under delegated authority.

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8–20017 Filed 8–28–08; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 500–1]**

### In the Matter of Markland Technologies, Inc.; Order of Suspension of Trading

August 27, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Markland Technologies, Inc. (''Markland'') because it has not filed any periodic reports since the period ended September 30, 2005. Markland is quoted on the Pink Sheets OTC Markets, Inc. under the ticker symbol MRKL.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT on August 27, 2008, through 11:59 p.m. EDT on September 10, 2008.

By the Commission.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E8–20220 Filed 8–27–08; 11:15 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–58422; File No. SR–CBOE–2008–89]**

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Rules Related to the Hybrid 3.0 Platform and Lead Market-Makers

August 25, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 22, 2008, the Chicago Board Options Exchange, Incorporated ( ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial''

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules relating to the Hybrid 3.0 Platform (''Hybrid 3.0'') and Lead Market-Makers (''LMMs''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), at the Exchange's Office of the Secretary and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange is proposing various changes related to Hybrid 3.0 and LMMs. First, Hybrid 3.0 is an electronic trading platform on CBOE's Hybrid Trading System (''Hybrid'') that allows a single quoter to submit an electronic quote that represents the aggregate Market-Maker quoting interest in a series for the trading crowd. CBOE is proposing to amend its rules to permit one or more quoters to submit electronic quotes in Hybrid 3.0 classes. The quotes would continue to represent the aggregate Market-Maker quoting interest in a series for the trading crowd. In particular, for example, if there are two LMMs appointed to submit electronic quotes at the same time in a particular series of a Hybrid 3.0 class, the following would apply:

- The best bid and best offer quote would be determined by considering all quotes available. For example, if LMM1 submits a quote of $1–$1.20 for 100 contracts and LMM2 submits a quote of $0.95–$1.10 for 50 contracts, the best bid and offer quote would be $1–$1.10, 100 X 50, which represents a firm disseminated market quote that the trading crowd is responsible for on an aggregate basis.
- The size of multiple quotes at the same price would be aggregated. For example, if LMM1 submits a quote of $1–$1.10 for 100 contracts and LMM2 submits a quote of $0.95–$1.10 for 50 contracts, the best bid and best offer quote would be $1–$1.10, 100 × 150, which represents a firm disseminated market quote that the trading crowd is responsible for on an aggregate basis.

The Exchange believes having the flexibility to have more than one quoter submit electronic quotes would help the Exchange to maintain a fair and orderly market, including in those instances where a quoter may be experiencing system problems and back-up quotes are needed. The Exchange also believes the proposal is consistent with other provisions in our rules that permit the Exchange to appoint more than one market-maker in good standing to determine a formula for generating automatically updated market quotations for a given class using the Exchange's AutoQuote system or a proprietary automated quotation updating system.[5]

Second, consistent with the existing Hybrid 3.0 Platform, automatic execution against Market-Maker quotes would not be allowed. Thus, for example, quotes would not automatically execute against other quotes. In this regard, the Exchange is proposing to amend Rule 6.45B(d) to resolve an inconsistency in its rules and make clear what would happen in the scenario where two quotes lock the market in a Hybrid 3.0 class. In particular, though the Exchange's rules elsewhere indicate that there will not be automatic execution against quotes,[6] Rule 6.45B(d) currently indicates that there will be up to a ten second counting period before locked quotes automatically execute against each other. To resolve this inconsistency, the Exchange is proposing to amend Rule 6.45B(d) to provide that, in the event a Market-Maker's disseminated quote(s) in a Hybrid 3.0 class would interact with the disseminated quote(s) of another Market-Maker resulting in a ''locked'' quote (*e.g.*, $1.00 bid–$1.00 offer), then (i) The Exchange will disseminate the locked market and both quotes will be deemed ''firm'' disseminated market quotes; (ii) the Market-Maker(s) whose quotes are locked will receive a quote update notification advising that their quotes are locked; and (iii) the locked quotes will not automatically execute against each other—instead they will remain locked until a quote is cancelled or changed.

Third, CBOE has an Off-Floor LMM program that provides LMMs with the flexibility to operate remotely away from CBOE's trading floor. CBOE is proposing to expand the program, which is currently limited to Hybrid classes,[7] to include Hybrid 3.0 classes. Specifically, CBOE proposes to amend Rule 8.15 to provide that an LMM will generally operate on CBOE's trading floor (referred to as an ''On-Floor LMM''), but can request that the Exchange authorize the LMM to function remotely away from CBOE's trading floor (referred to as an ''Off-Floor LMM'') on a class-by-class basis for Hybrid 3.0 classes. The procedures for Off-Floor LMMs in Hybrid 3.0 classes will be substantially the same as the procedures that are applicable to Off-Floor LMMs in Hybrid classes.[8] The procedures will provide the following:

- An LMM can request that the Exchange authorize it to operate as an Off-Floor LMM in one or more classes. The Exchange will consider the factors specified in Rule 8.15(a)(1),[9] as well as

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Rules 8.7.07, *Additional Obligations for Classes in Which CBOE Hybrid System is NOT Implemented*, and 8.15, *Lead Market-Makers and Supplemental Market-Makers in Non-Hybrid and Hybrid 3.0 Classes*. The Exchange is also proposing to amend the title of Rule 8.15 to delete an outdated reference to ''Non-Hybrid'' since there are not any of these classes. *See* Securities Exchange Act Release No. 58153 (July 14, 2008), 73 FR 41386 (July 18, 2008) (SR–CBOE–2008–67) (immediately effective rule change that, among other things, deleted references to ''Non-Hybrid'' classes in the CBOE Rules).

[6] *See* paragraph (b)(i)(A)(2) of Rule 6.13, *CBOE Hybrid System's Automatic Execution Feature* (which indicates only that eligible orders will receive automatic execution against public customer orders in the electronic book); *see also* Securities Exchange Act Release No. 55874 (June 7, 2007), 72 FR 32688 (June 13, 2007) (SR–CBOE–2006–101) (order approving the Hybrid 3.0 Platform which indicates, among other things, that automatic execution against quotes (whether electronic or manual) will not be allowed).

[7] *See* Securities Exchange Act Release No. 57747 (April 30, 2007 [sic]), 73 FR 25811 (May 7, 2008) (SR–CBOE–2008–49) (immediately effective rule change adopting the Off-Floor LMM program for Hybrid classes).

[8] *See* Interpretation and Policy .01 to Rule 8.15A, *Lead Market-Makers in Hybrid Classes*.

[9] Rule 8.15(a)(1) provides that the factors to be considered in selecting LMMs in Hybrid 3.0 classes include: adequacy of capital, experience in trading index options or options on ETFs, presence in the trading crowd, adherence to Exchange rules and ability to meet the obligations specified below. An individual may be appointed as an LMM in only one zone for an expiration month but may also be appointed as a Supplemental Market-Maker (''SMM'') in other zones. When individual members are associated with one or more other members,

the factors applicable to Off-Floor DPMs specified in paragraph (g) of Rule 8.83, *Approval to Act as a DPM*,[10] in determining whether to permit an LMM to operate as an Off-Floor LMM. If an LMM is approved to operate as an Off-Floor LMM in one or more classes, the Off-Floor LMM can have an LMM designee trade in open outcry in the option classes allocated to the Off-Floor LMM, but the Off-Floor LMM shall not receive a participation entitlement under Rule 8.15B, Participation Entitlement of LMMs, with respect to orders represented in open outcry.

• An LMM that is approved to operate as an Off-Floor LMM in one or more classes can request that the Exchange authorize it to operate as an On-Floor LMM in those option classes. In making such a determination, the Exchange should evaluate whether the change is in the best interests of the Exchange, and may consider any information that it believes will be of assistance to it. Factors to be considered may include, but are not limited to, performance, operational capacity of the Exchange or LMM, efficiency, number and experience of personnel of the LMM who will be performing functions related to the trading of the applicable securities, number of securities involved, number of Market-Makers affected, and trading volume of the securities.[11]

• In addition, CBOE is proposing to include a requirement that, as part of a pilot program until March 14, 2009, an Off-Floor LMM not allow more than one Market-Maker affiliated with the Off-Floor LMM to trade on CBOE's trading floor in any specific option class allocated to the Off-Floor LMM and provided such Market-Maker is trading on a separate membership (absent the pilot program, an Off-Floor LMM may not allow any Market-Makers affiliated with the Off-Floor LMM to trade on CBOE's trading floor in any class allocated to the Off-Floor LMM) and provided the Off-Floor LMM does not have an LMM designee trading in open outcry in the option classes allocated to the Off-Floor LMM.[12]

By permitting an LMM appointed to a Hybrid 3.0 class to function as an Off-Floor LMM, CBOE believes that the rule change provides more flexibility to a member organization that may wish to function remotely, and provides more flexibility to CBOE when allocating option classes to the best applicant. It also removes a potential operational dilemma for a Market-Maker that functions as a DPM or LMM in other Hybrid classes and would like to function remotely away from the trading floor as a DPM/LMM in all of its option classes. Accordingly, CBOE believes that the proposed rule change is designed to promote just and equitable principles of trade.

Fourth, CBOE is proposing to update the LMM obligations listed in Rule 8.15 to include a requirement that, subject to paragraph (d) of Rule 54.7, *General Prohibitions* (under the CBOE Stock Exchange Rules), LMMs in Hybrid 3.0 classes (whether On-Floor or Off-Floor) maintain information barriers that are reasonably designed to prevent the misuse of material, non-public information with any affiliates that may conduct a brokerage business in option classes allocated to the LMM or act as specialist or Market-Maker in any security underlying options allocated to the LMM, and otherwise comply with the requirements of Rule 4.18, *Prevention of the Misuse of Material, Non-Public Information*.[13]

Finally, CBOE is proposing to amend Rule 8.15B. Currently under the rule, if an LMM entitlement has been established for a class, the entitlement applies for both electronic *and* open outcry trades (except that, as discussed above, an Off-Floor LMM is not eligible to have an open outcry participation entitlement). The Exchange is proposing to amend the rule to provide that an LMM participation entitlement may be established for electronic *and/or* open outcry trading on a class-by-class basis (except that an Off-Floor LMM would still not be eligible to have an open outcry participation entitlement). This change would apply for Hybrid and Hybrid 3.0 classes. The change will provide the Exchange with flexibility to determine, for example, to have a participation entitlement for electronic trades executed by an LMM(s) in Hybrid options class XYZ but have no participation entitlement for trades executed in open outcry by an LMM(s) in the same class.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[14] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) Act[15] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. The Exchange believes that the proposed changes to allow for more than one quoter to submit electronic quotes in Hybrid 3.0 classes, to clarify the manner in which the Hybrid 3.0 Platform operates in a locked market scenario, to allow for Off-Floor Hybrid 3.0 LMMs and update our information barrier procedures for LMMs generally, and to allow for the application of an LMM participation entitlement for electronic and/or open outcry trades should help the Exchange to maintain a fair and orderly market and create incentives for LMMs to provide liquidity, and investors will benefit as a result.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any

only one member may receive an LMM appointment.

[10] In addition to CBOE's Off-Floor LMM program, CBOE also has an Off-Floor DPM program. Rule 8.83(g) provides that the factors to be consider in determining whether to permit a Designated Primary Market-Maker ("DPM") to operate as an Off-Floor DPM include, but are not limited to, any one or more of the following: (i) Adequacy of capital; (ii) operational capacity; (iii) trading experience of and observance of generally accepted standards of conduct by the applicant, its associated persons, and the DPM Designees who will represent the applicant in its capacity as a DPM; (iv) number and experience of support personnel of the applicant who will be performing functions related to the applicant's DPM business; (v) regulatory history of and history of adherence to CBOE Rules by the applicant, its associated persons, and the DPM Designees who will represent the applicant in its capacity as a DPM; (vi) willingness and ability of the applicant to promote the Exchange as a marketplace; (vii) performance evaluations conducted pursuant to Rule 8.60, *Evaluation of Trading Crowd Performance*; and (viii) in the event that one or more shareholders, directors, officers, partners, managers, members, DPM Designees, or other principals of an applicant is or has previously been a shareholder, director, officer, partner, manager, member, DPM Designee, or other principal in another DPM, adherence by such DPM to the requirements set forth in Section C of Chapter VIII of the CBOE Rules respecting DPM responsibilities and obligations during the time period in which such person(s) held such position(s) with the DPM.

[11] These On-/Off-Floor LMM provisions are substantially similar to the corresponding provisions for On-/Off-Floor Hybrid LMMs in paragraph .01(b) to Rule 8.15A and for On-/Off-Floor DPMs in paragraphs (g) and .01 to Rule 8.83.

[12] This provision is substantially similar to existing provisions in CBOE's rules respecting Off-Floor Hybrid LMMs and Off-Floor DPM obligations. *See* paragraph .01(c) of CBOE Rule 8.15A and paragraph (a)(v) of CBOE Rule 8.85, *DPM Obligations*. CBOE is proposing a related cross-reference update to paragraph (c)(vii)(1) of CBOE Rule 8.3.

[13] This language is substantially similar to existing language in CBOE's rules respecting Hybrid LMM obligations and e-DPM obligations. *See* paragraph (b)(vii) of Rule 8.15A and paragraph (x) of Rule 8.93, *e-DPM Obligations*.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposal.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing rule does not (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [16] and Rule 19b–4(f)(6) thereunder.[17] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2008–89 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2008–89. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2008–89 and should be submitted on or before September 19, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8–20064 Filed 8–28–08; 8:45 am]

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[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–58421; File No. SR–FINRA–2008–025]**

## Self Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change Relating to the Adoption of NASD Rule 2790 as FINRA Rule 5130 (Restrictions on the Purchase and Sale of Initial Public Offerings) in the Consolidated FINRA Rulebook

August 25, 2008.

**I. Introduction**

On June 12, 2008, the Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposal to adopt NASD Rule 2790 (Restrictions on the Purchase and Sale of Initial Equity Public Offerings) (''Rule'') as FINRA Rule 5130 in the consolidated FINRA rulebook, with only minor changes. This proposal was published for comment in the **Federal Register** on July 16, 2008.[3] The Commission received one comment on the proposal.[4] This order approves this proposed rule change.

**II. Description of the Proposed Rule Change**

As part of the process of developing the new consolidated rulebook (the ''Consolidated FINRA Rulebook''),[5] FINRA proposed to adopt the Rule as FINRA Rule 5130 in the Consolidated FINRA Rulebook with only minor changes. The Rule is designed to protect the integrity of the initial public offering (''IPO'') process by ensuring that FINRA member firms make bona fide public offerings of securities at the offering price, such firms do not withhold

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 58134 (Jul. 10, 2008), 73 FR 40892 (Jul. 16, 2008) (SR–FINRA–2008–025).

[4] *See* submission via SEC WebForm from Dan Mayfield, President, Sanderlin Securities, dated July 24, 2008.

[5] The current FINRA rulebook consists of two sets of rules: (1) NASD rules and (2) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together referred to as the ''Transitional Rulebook''). The Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). Dual Members also must comply with NASD rules. For more information regarding the rulebook consolidation process, *see* FINRA *Information Notice* March 12, 2008 (Rulebook Consolidation Process).

securities in a public offering for their own benefit or use such securities to reward persons who are in a position to direct future business to firms, and industry insiders, including FINRA member firms and their associated persons, do not take advantage of their insider position to purchase new issues for their own benefit at the expense of public customers. Because of these controls, FINRA believes that the Rule plays an important part in maintaining investor confidence in the capital raising and IPO process.

The Rule was originally adopted in 2003, replacing NASD IM–2110–1 (the Free-Riding and Withholding Interpretation) in its entirety.[6] The Rule was subject to extensive input from the industry and other interested persons during a four-year rulemaking process, and FINRA believes that there is broad support for it. The Rule provides necessary predictability and certainty in support of capital formation. Based on FINRA's experience, the Rule is achieving its purpose and is significantly easier than NASD IM–2110–1 for FINRA member firms and the investing public to understand and follow. Among other things, FINRA has seen a significant reduction in the number of interpretive and exemptive issues that have arisen with respect to the IPO allocation process since the Rule became effective. There is no Incorporated NYSE Rule equivalent to the Rule.[7]

For the reasons discussed above, FINRA proposed to transfer NASD Rule 2790 to the Consolidated FINRA Rulebook in substantially the same form. As part of this transfer, FINRA proposed minor changes to the Rule to reflect the registration of the NASDAQ Stock Market LLC (''NASDAQ'') as a national securities exchange. The Rule currently refers to the NASDAQ Global Market because at the time the Rule was adopted, references to the listing standards of a national securities exchange did not include NASDAQ's Global Market. Since NASDAQ completed its registration as a national securities exchange, the references to the NASDAQ Global Market in the Rule are no longer necessary. In addition, FINRA proposed certain minor, technical changes to the Rule.

FINRA represented that it would announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval of the proposed rule change.

### III. Summary of Comments

The Commission received one comment letter on the proposal.[8] The commenter urged that FINRA amend the proposal to except FINRA members that are not underwriters from the Rule. FINRA has considered the comment and determined that it is not germane to the proposal in that the comment relates to the substantive requirements of the Rule which FINRA did not propose to change other than in minor, technical ways.

### IV. Discussion and Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder that are applicable to a national securities association.[9] In particular, the Commission believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[10] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission notes that it has previously approved the Rule,[11] and the proposal merely moves the Rule nearly verbatim from the NASD rulebook to the Consolidated FINRA Rulebook. The Commission believes that the move proposed in this filing is primarily ministerial and only aids FINRA members in complying with existing obligations.

### V. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (File No. SR–FINRA–2008–025) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8–20084 Filed 8–28–08; 8:45 am]

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[6] *See* Securities Exchange Act Release No. 48701 (October 24, 2003), 68 FR 62126 (October 31, 2003) (Order Approving File No. SR–NASD–99–60); *see also* NASD *Notice to Members* 03–79 (December 2003) (SEC Approves New Rule 2790 (Restrictions on the Purchase and Sale of IPOs of Equity Securities); Replaces Free-Riding and Withholding Interpretation).

[7] Incorporated NYSE Rules only apply to FINRA members who are also members of the NYSE. All FINRA members are subject to existing NASD rules. *See* Note 5, *supra.* Thus, the movement of a rule that existed only the NASD rulebook but was not an Incorporated NYSE Rule into the Consolidated FINRA Rulebook does not create any new obligations for FINRA members.

[8] *See* Note 4, *supra.*

[9] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78o–3(b)(6).

[11] *See* Note 6, *supra.*

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–58413; File No. SR–NYSE Arca–2008–84]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. To Discontinue Its Policy of Requiring Legal Opinions in Connection With Listings of Securities

August 22, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on August 8, 2008, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposal from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE Arca, through its wholly-owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities''), proposes to discontinue its practice of requiring the delivery of an opinion of counsel in connection with any application to list securities on the Exchange. In lieu thereof, the Exchange will require companies to (i) furnish the Exchange with copies of opinions of counsel filed in connection with recent public offerings or private placements or (ii) if no opinions of counsel exist, provide to the Exchange a certificate of good standing from the company's jurisdiction of incorporation. In addition, the Exchange is discontinuing its policy of requiring an opinion of counsel to the effect that the company is in compliance with all of the Exchange's corporate governance requirements at the time of listing and, in lieu thereof, will require that companies provide a revised form of initial written affirmation evidencing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

their compliance with the applicable corporate governance requirements.[3] The text of the proposed rule change is available on the Exchange's Web site (*http://www.nyse.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to discontinue its practice of requiring the delivery of an opinion of counsel in connection with any application to list securities on the Exchange. In lieu thereof, the Exchange will require companies to (i) furnish the Exchange with copies of opinions of counsel filed in connection with recent public offerings or private placements or (ii) if no opinions of counsel exist, provide to the Exchange a certificate of good standing from the company's jurisdiction of incorporation. In addition, the Exchange is discontinuing its policy of requiring an opinion of counsel to the effect that the company is in compliance with all of the Exchange's corporate governance requirements at the time of listing and, in lieu thereof, will require that companies provide a revised form of initial written affirmation evidencing their compliance with the applicable corporate governance requirements.

The Exchange has had a longstanding policy of requiring the delivery of an opinion of counsel addressed to the Exchange in connection with each application to list securities, including applications to list additional shares of a previously listed class.[4] The Exchange believes that its opinion requirement is duplicative of several safeguards that now exist to protect investors in listed securities. In particular, an issuer's independent auditor reviews the issuance of securities as part of its annual audit. Additionally, the underwriters of securities sold in a public offering receive legal opinions as to the validity of the issuance of the securities they purchase, as well as performing their own due diligence on the company and the securities. Furthermore, a legal opinion as to the legality of the issuance of the securities being registered is delivered to the SEC in connection with the filing of any registration statement. Accordingly, the Exchange proposes to end its policy of requiring legal opinions in connection with listing applications, including applications to list additional shares of a previously listed class. Through its standard condition letter, the Exchange will require issuers to (i) furnish the Exchange with copies of opinions of counsel filed in connection with recent public offerings or private placements or (ii) if no opinions of counsel exist, provide to the Exchange a certificate of good standing from the company's jurisdiction of incorporation.[5]

The Exchange notes that the Commission approved a rule filing by the American Stock Exchange (the ''Amex'') in 2000 to eliminate opinion requirements from the Amex Company Guide under the same conditions NYSE Arca is proposing in this filing.[6] Additionally, to the Exchange's knowledge, Nasdaq does not require legal opinions in connection with new listings. As such, the Exchange believes that it is appropriate to conform its listing procedure in this regard to those of its direct competitors. In doing so, the Exchange will avoid the possibility of any competitive harm arising out of the imposition of this additional burden on issuers.

No other major exchange requires as a condition to listing an opinion with respect to the issuer's compliance with the exchange's corporate governance requirements. The Exchange believes that it has two different sources of assurance that, at the time of initial listing, a company is in compliance with the Exchange's corporate governance requirements. First, the company provides a listing application executed by an authorized officer of the company in which it affirms that, at the time of filing the application, it has ''read and understood the Exchange's Listings Rule, and fully believes itself to be in compliance with, and, if approved for listing, intends to continue to be in compliance with, the Exchange's listing and corporate governance rules and requirements, as amended.'' Second, the Company provides a written affirmation at the time of listing that it is in compliance with the Exchange's board and audit committee independence requirements. The Exchange intends to amend the written affirmation so that it includes affirmations of compliance with the Exchange's nominating and compensation committee independence requirements and thereby comprehensively covers the Exchange's corporate governance requirements. The revised affirmation is included in Exhibit 3 to the filing.[7] The Exchange believes that the affirmation in the listing application and the written affirmation provide sufficient evidence of a company's compliance with the corporate governance requirements at the time of listing and that requiring a corporate governance opinion is unnecessary.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of section 6[8] of the Act in general and furthers the objectives of section 6(b)(5),[9] in particular, in that it is designed to promote just and

[3] *See* Exhibit 3 to this filing, which includes the revised initial and annual written affirmation (Rule 5.3—Corporate Governance and Disclosure Policies) marked to show changes from the initial written affirmation previously used by the Exchange. The Commission notes that pursuant to the General Instructions for Form 19b–4, if any form, report, or questionnaire is referred to in a proposed rule change, then the form, report, or questionnaire must be attached and shall be considered as part of the proposed rule change. *See* Securities Exchange Act Release No. 50486 (October 4, 2004), 69 FR 60287 (October 8, 2004).

[4] *The required opinion relates to:* The legality and valid existence of the issuer; the issuer's qualification to do business in jurisdictions other than its jurisdiction of incorporation; the validity of authorization and issuance of the securities; whether the securities are fully paid and non-assessable; the validity of the securities; any government orders or proceedings that are a prerequisite to the issuance of the securities; whether registration of the securities is required; whether such registration has occurred; and that the company is in compliance with the Exchange's corporate governance listing requirements.

[5] The Exchange will also put companies on notice of this requirement by including a reference to it in the list of required documentation in connection with listing applications presented on its Web site and the checklist of required documentation sent out to listing applicants. See the revised list of required documentation included in Exhibit 3 hereto. The Exchange has significantly revised and shortened the section of its Web site dealing with the listing application process, primarily by deleting text that relates to procedures that are no longer in use and have not been for some time. In revising the Web site, the Exchange has not changed its listing policies or procedures in any way that is not disclosed elsewhere in this filing.

[6] *See* Securities Exchange Act Release No. 42539 (March 17, 2000), 65 FR 15672 (March 23, 2000) (SR–Amex–99–39).

[7] *See* note 3, *supra*.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

equitable principles of trade, to remove impediments, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed amendment specifically seeks to remove impediments to and perfect the mechanisms of a free and open market by conforming the Exchange's listing procedures to those of Nasdaq and the Amex, thereby eliminating any competitive disadvantage the Exchange may suffer as a result of imposing a legal opinion requirement with respect to securities listings. In addition, the Exchange's procedures will continue to protect the interests of investors by imposing requirements that will ensure that listed companies are duly and validly organized and in good standing in their jurisdiction of incorporation.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments on the proposed rule change were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The proposed rule change has taken effect upon filing pursuant to section 19(b)(3)(A) of the Act.[10]

The Exchange asserts that the proposed rule change (i) will not significantly affect the protection of investors or the public interest, (ii) will not impose any significant burden on competition, and (iii) will not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change as required by Rule 19b–4(f)(6).[11]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2008–84 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2008–84. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2008–84 and should be submitted on or before September 19, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8–20063 Filed 8–28–08; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 C.F.R. 240.19b–4(f)(6).

[12] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–58420; File No. SR–Phlx–2008–62]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Exchange's Fee Schedule Concerning Complex Orders

August 25, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 22, 2008, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Phlx, pursuant to section 19(b)(1) of the Act[3] and Rule 19b–4 thereunder,[4] proposes to amend its option fee schedule by establishing that certain fees would not be assessed on contracts that are executed electronically as part of a Complex Order[5] on the Exchange's electronic trading platform for options, Phlx XL,[6] and that contract volume thresholds applicable to certain

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(1).

[4] 17 CFR 240.19b–4.

[5] The Exchange recently filed, and the Commission approved, a proposed rule change with the Commission to automate the process for handling and executing complex orders. *See* Securities Exchange Act Release No. 58361 (August 14, 2008) (SR–Phlx–2008–50) (''Approval Order''). A Complex Order is composed of two or more option components and is priced as a single order (a ''Complex Order Strategy'') on a net debit or net credit basis.

[6] *See* Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 46612 (August 3, 2004) (SR–Phlx–2003–59).

Exchange subsidies, volume bonuses and discounts would not include contracts that are executed electronically as part of a Complex Order.

This proposal is effective upon filing and will be implemented beginning with the rollout of the automated Complex Order system on the Exchange on August 22, 2008. The rollout date will be posted on the Exchange's Web site at *http://www.phlx.com/index.aspx*.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.phlx.com/regulatory/reg_rulefilings.aspx*.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to revise the Exchange's fee schedule in order to launch the Exchange's automated Complex Order system, and to compete for and encourage the submission of electronic Complex Order flow to the Exchange. Pursuant to this proposal, the Exchange intends to amend the Exchange's: (i) Summary of Equity Option, and MNX, NDX, RUT and RMN Charges; (ii) Summary of Index Option Charges; (iii) Summary of U.S. Dollar-Settled Foreign Currency Option Charges; (iv) Market Access Provider Subsidy; and (v) Options Floor Broker Subsidy, as described in detail below.

Summary of Equity Option, and MNX, NDX, RUT and RMN Charges

Currently, the Exchange assesses various option transaction charges for equity options, depending on such factors as the category of person(s) submitting orders for execution (e.g., customers, specialists, broker-dealers, Registered Options Traders (''ROTs'') [7] and Firms are all charged differently, on a per contract basis, ranging from $0.00 per contract to $0.45 per contract) and the manner in which the order is delivered to the Exchange. For example, broker-dealer orders submitted electronically to the Exchange's systems are charged $0.45 per contract, whereas broker-dealer orders submitted through means other than the Exchange's electronic system are charged $0.25 per contract. Customers submitting orders in equity options are generally not charged transaction fees [8] whereas ROTs and Firms are charged.

The Exchange also assesses an option comparison charge of $0.03 per contract for ROTs and $0.04 per contract for Firms that submit proprietary orders. Customers and broker-dealers are not charged.

The Exchange currently provides a discount for ROTs (on-floor) and specialists that exceed 4.5 million contracts in a given month (the ''Volume Threshold'') by assessing $0.01 per contract on contract volume above the Volume Threshold instead of the applicable options transaction charge and option comparison charge described in the Summary of Equity Option, and MNX, NDX, RUT and RMN Charges. Complex Order volume will not be used in calculating the Volume Threshold.

In order to compete for order flow respecting Complex Orders in equity options, the Exchange proposes to amend the fee schedule to clarify that the option comparison charge and the option transaction charge will not be assessed on contracts in equity options that are executed electronically as part of a Complex Order.

Summary of Index Option Charges

The Exchange currently assesses an option comparison charge and an option transaction charge for index option transactions, as described in the Exchange's Summary of Index Option Charges. The Exchange proposes to amend the fee schedule to clarify that the option comparison charge and the option transaction charge will not be assessed on contracts in Index Options that are executed electronically as part of a Complex Order.

Summary of U.S Dollar-Settled Foreign Currency Option Charges

The Exchange currently assesses an option comparison charge and an option transaction charge for transactions in options overlying U.S. dollar-settled foreign currencies, as described in the Exchange's Summary of U.S Dollar-Settled Foreign Currency Option Charges. The Exchange proposes to amend the fee schedule to clarify that the option comparison charge and the option transaction charge will not be assessed on contracts in U.S dollar-settled foreign currency options that are executed electronically as part of a Complex Order.

Market Access Provider Subsidy

In August 2007, the Exchange amended its fee schedule to provide a per contract subsidy (the ''Subsidy'') for certain Exchange members known as Market Access Providers (''MAPs'').[9] A MAP is an Exchange member organization that offers to customers automated order routing systems and electronic market access to U.S. options markets. The Exchange pays a per-contract MAP Subsidy to any Exchange member organization that qualifies as a MAP (an ''Eligible MAP,'' as described in footnote 5(b) of the Market Access Provider Subsidy section of the Exchange's fee schedule). The Subsidy is paid on contract volume that exceeds the ''Baseline Order Flow'' in ''Eligible Contracts'' as described in the MAP Subsidy section. The Exchange also pays a monthly Volume Bonus to MAPs that exceed certain volume thresholds in Eligible Contracts in a given month.

The Exchange proposes to amend the Market Access Provider Subsidy section of the fee schedule by clarifying that volume in Complex Orders that is submitted and executed electronically on Phlx XL will not be counted towards the MAP's Baseline Order Flow and that the Exchange will not use Complex Order volume to determine eligibility for the Monthly MAP Volume Bonus. The Exchange proposes to state in the MAP Subsidy section of the fee schedule that contracts executed electronically on Phlx XL as part of a Complex Order would not be considered to be ''Eligible Contracts,'' and thus will not be included in the Exchange's calculation of Baseline Order Flow and will not be included in its calculation of monthly volume in determining a MAP's eligibility for the Monthly Volume Bonus.

[7] ROT equity option transaction charges are referred to on the Exchange's fee schedule as ''Registered Option Trader (on floor).'' This charge applies to ROTs, Streaming Quote Traders (''SQTs''), and Remote Streaming Quote Traders (''RSQTs''). SQTs and RSQTs are considered to be ROTs pursuant to Exchange Rule 1014. ROT transactions entered from off-floor would continue to be included in the broker-dealer equity option transaction charges for billing purposes, as set forth in footnote 3 of the Exchange's Summary of Equity Option, and MNX, NDX, RUT and RMN Charges fee schedule.

[8] Customers are charged $0.12 per contract for executions in MNX and NDX options.

[9] *See* Securities Exchange Act Release No. 56274 (August 16, 2007), 72 FR 48720 (August 24, 2007) (SR–Phlx–2007–54).

Options Floor Broker Subsidy

The Exchange currently pays an Options Floor Broker Subsidy to member organizations with registered Floor Brokers based on two volume thresholds. In order to be eligible for the Options Floor Broker Subsidy, the member organization must have an average daily volume in a particular calendar month in excess of 75,000 contracts, and must have 40,000 executed contracts or more per day for at least 8 trading days during that same month.

The Exchange proposes to amend the Options Floor Broker Subsidy section of the fee schedule by establishing that only the largest component of a complex order (*i.e.*, the component that includes the greatest number of contracts) will be included in the calculation of the two above-mentioned volume thresholds, and that, while the largest component's volume will count towards the volume threshold, the Exchange will not pay the Options Floor Broker Subsidy for any contracts that are executed electronically as part of a Complex Order.

Cancellation Fees

The Exchange currently charges a cancellation fee of $1.10 per order for each order (in equity, index and U.S. dollar-settled foreign currency options) that is delivered electronically that exceeds the number of orders executed on the Exchange by a member organization in a given month. The cancellation fee is not assessed in a month in which fewer than 500 electronically delivered orders are cancelled. For example, if a member organization delivers 1700 orders in a given month, and 700 of those orders are executed on the Exchange but the member organization cancels 1,000 of those orders in a given month, the Exchange will assess a cancellation fee of $330.00 ($1.10 × 300 orders cancelled in excess of the 700 executed orders). The cancellation fee will not apply to Complex Orders that are submitted electronically in equity, index and U.S. dollar-settled foreign currency options.

Miscellaneous Fees and Charges

There are several current charges that will continue to be assessed for contracts executed electronically as part of a Complex Order, and thus are not proposed to be amended.

First, the Exchange charges a real-time risk management fee in equity and index options of $.0025 per contract for firms receiving information on a real-time basis. The real-time risk management fee will apply to Complex Orders that are executed electronically as part of a Complex Order in equity and index options.

Secondly, the Exchange assesses per-contract payment for order flow fees on transactions resulting from customer orders in equity options as described in the Equity Option, and MNX, NDX, RUT and RMN Charges. Such fees, if applicable, will apply to Complex Orders that are executed electronically as part of a Complex Order in equity options.

Third, the Exchange charges a specialist deficit (shortfall) fee of $0.35 per contract for specialists trading any Top 120 equity option if 12% of the total national monthly contract volume (volume threshold) is not affected on the Exchange. The Exchange will include contracts executed electronically as part of a Complex Order in its calculation of the volume threshold.

Finally, the Exchange currently ''caps'' the specialist deficit (shortfall) fee for any Top 120 equity option listed after February 2004 and for any Top 120 equity option acquired by a new specialist unit [10] within the first 60 days of operations, by establishing increasing volume thresholds (beginning at 0% for the first month of operations, ramping up to 12% in the fifth month of operations and thereafter). The Exchange will include contracts executed electronically as part of a Complex Order in its calculation of the ''new specialist unit'' volume threshold.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with section 6(b) of the Act [11] in general, and furthers the objectives of section 6(b)(4) of the Act [12] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. Specifically, the Exchange believes that this proposal is equitable because it generally should result in the effective waiver of comparison and transaction charges that would otherwise be assessed to specialists, ROTs, SQTs, RSQTs and Floor Brokers submitting Complex Orders to the Exchange, thus encouraging the submission of electronic Complex Orders to the Exchange for execution.

The Exchange further believes that the inclusion of contract volume executed electronically as part of Complex Orders in its calculation of certain volume thresholds relating to the various volume discounts and volume bonuses enumerated above is equitable because it generally applies to all market participants that qualify for such volume bonuses and discounts. The Exchange also believes that the exclusion of Complex Orders and contract volume executed electronically as part of Complex Orders from certain fees should create incentives for member organizations to submit electronic Complex Orders to the Exchange, thus enhancing the depth and liquidity of the Exchange's markets.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act [13] and paragraph (f)(2) of Rule 19b–4 [14] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2008–62 on the subject line.

[10] A ''new specialist unit'' is one that is approved to operate as a specialist unit by the Exchange's Options Allocation, Evaluation and Securities Committee on or after February 1, 2004.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 240.19b–4(f)(2).

*Paper Comments*

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2008–62. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2008–62 and should be submitted on or before September 19, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8–20140 Filed 8–28–08; 8:45 am]

BILLING CODE 8010–01–P

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration # 11370]**

### New Hampshire Disaster Number NH–00006

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 1.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of New Hampshire ( FEMA–1782–DR ), dated 08/11/2008.

*Incident:* Severe Storms, Tornado, and Flooding.

*Incident Period:* 07/24/2008.

*Effective Date:* 08/20/2008.

*Physical Loan Application Deadline Date:* 10/10/2008.

*Economic Injury (EIDL) Loan Application Deadline Date:* 05/11/2009.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of New Hampshire, dated 08/11/2008, is hereby amended to include the following areas as adversely affected by the disaster.

*Primary Counties:* Merrimack, Strafford.

*Contiguous Counties (Economic Injury Loans Only):*

New Hampshire: Sullivan.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

**James E. Rivera,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. E8–20129 Filed 8–28–08; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[License No. 09/79–0454]**

### Emergence Capital Partners SBIC, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Emergence Capital Partners SBIC, L.P., 160 Bovet Road, Suite 300, San Mateo, CA 94402, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Emergence Capital Partners SBIC, L.P. proposes to provide equity/debt security financing to Krugle, Inc., 200 Middlefield Road, Suite 104, Menlo Park, CA 94025.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Emergence Capital Partners, L.P. and Emergence Capital Associates, L.P., all Associates of Emergence Capital Partners SBIC, L.P., own more than ten percent of Krugle, Inc., and therefore this transaction is considered a financing of an Associate requiring prior SBA approval.

Notice is hereby given that any interested person may submit written comments on the transaction, within fifteen days of the date of this publication, to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

August 11, 2008.

**A. Joseph Shepard,**

*Associate Administrator for Investment.*

[FR Doc. E8–20125 Filed 8–28–08; 8:45 am]

BILLING CODE 8025–01–P

## DEPARTMENT OF STATE

**[Public Notice 6337]**

### In the Matter of the Designation of: Joseph Kony as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the individual known as Joseph Kony has committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

[15] 17 CFR 200.30–3(a)(12).

Dated: August 22, 2008.

**Condoleezza Rice,**

*Secretary of State, Department of State.*

[FR Doc. E8–20164 Filed 8–28–08; 8:45 am]

BILLING CODE 4710–10–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Supplemental Notice for the National Parks Overflights Advisory Group Aviation Rulemaking Committee Meeting

**ACTION:** Revised notice of meeting.

**SUMMARY:** The Federal Aviation Administration (FAA) and the National Park Service (NPS), in accordance with the National Parks Air Tour Management Act of 2000, announce the next meeting of the National Parks Overflights Advisory Group (NPOAG) Aviation Rulemaking Committee (ARC). This notification provides the dates, location, and agenda for the meeting. This notification revises **Federal Register** notice published on August 19, 2008 (Vol. 73, No. 161, Page 48427–48428) to indicate a change in the time of meetings and that interested persons may attend the meeting.

**DATES AND LOCATION:** The NPOAG ARC will meet on September 3–4, 2008. The meeting will take place in a commercial office building at 826 East Front Street, Port Angeles, WA, leased by the NPS. The office phone number at this facility is (360)–565–1320. The meetings will be held from 8 a.m. to 5 p.m. on both days. Although this is not a public meeting, interested persons may attend the meeting.

**FOR FURTHER INFORMATION CONTACT:** Barry Brayer, AWP–1SP, Special Programs Staff, Federal Aviation Administration, Western-Pacific Region Headquarters, P.O. Box 92007, Los Angeles, CA 90009–2007, telephone: (310) 725–3800, *e-mail: Barry.Brayer@faa.gov*, or Karen Trevino, National Park Service, Natural Sounds Program, 1201 Oakridge Dr., Suite 100, Fort Collins, CO, 80525, telephone: (970) 225–3563, *e-mail: Karen_Trevino@nps.gov*.

**SUPPLEMENTARY INFORMATION:**

#### Background

The National Parks Air Tour Management Act of 2000 (NPATMA), enacted on April 5, 2000, as Public Law 106–181, required the establishment of the NPOAG within one year after its enactment. The Act requires that the NPOAG be a balanced group of representatives of general aviation, commercial air tour operations, environmental concerns, and Native American tribes. The Administrator of the FAA and the Director of NPS (or their designees) serve as ex officio members of the group. Representatives of the Administrator and Director serve alternating 1-year terms as chairman of the advisory group.

The duties of the NPOAG include providing advice, information, and recommendations to the FAA Administrator and the NPS Director on: Implementation of Public Law 106–181; quiet aircraft technology; other measures that might accommodate interests of visitors to national parks; and at the request of the Administrator and the Director, on safety, environmental, and other issues related to commercial air tour operations over national parks or tribal lands.

#### Agenda for the September 3–4, 2008 NPOAG Meeting

The agenda for the meeting will include, but is not limited to, the following: Development of a Strategic Plan, review and approval of the meeting minutes from the September 25–26, 2007 NPOAG meeting in Fort Collins, CO; update on ongoing Air Tour Management Program projects; and NPOAG subgroup assignments.

#### Attendance at the Meetings

Although this is not a public meeting, interested persons may attend. Because seating is limited, if you plan to attend please contact one of the persons listed under **FOR FURTHER INFORMATION CONTACT** so that meeting space may be made to accommodate all attendees.

#### Record of the Meetings

If you cannot attend the NPOAG meeting, a summary record of the meeting will be made available under the program information section of the FAA ATMP Web site at *http://www.atmp.faa.gov* or through the Special Programs Staff, Western-Pacific Region, Federal Aviation Administration, P. O. Box 92007, Los Angeles, CA 90009–2007, telephone (310) 725–3800.

Issued in Hawthorne, CA, on August 25, 2008.

**Barry S. Brayer,**

*Manager, Special Programs Office, Western-Pacific Region.*

[FR Doc. E8–20148 Filed 8–28–08; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Annual Materials Report on New Bridge Construction and Bridge Rehabilitation

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice.

**SUMMARY:** Section 1114 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59; 119 Stat. 1144) continued the highway bridge program to enable States to improve the condition of their highway bridges over waterways, other topographical barriers, other highways, and railroads. Section 1114(f) amends 23 U.S.C. 144 by adding subsection (r), requiring the Secretary of Transportation (Secretary) to publish in the **Federal Register** a report describing construction materials used in new Federal-aid bridge construction and bridge rehabilitation projects.

**DATES:** The report will be posted on the FHWA Web site no later than August 10, 2008.

**ADDRESSES:** The report will be posted on the FHWA Web site at: *http://www.fhwa.dot.gov/bridge/britab.htm.*

**FOR FURTHER INFORMATION CONTACT:** Ms. Ann Shemaka, Office of Bridge Technology, HIBT–30, (202) 366–1575, or Mr. Thomas Everett, Office of Bridge Technology, HIBT–30, (202) 366–4675, Federal Highway Administration, 1200 New Jersey Ave., SE., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:** In conformance with 23 U.S.C. 144(r), the FHWA has produced a report that summarizes the types of construction materials used in new bridge construction and bridge rehabilitation projects. Data on Federal-aid and non-Federal-aid highway bridges are included in the report for completeness. The December 2007 National Bridge Inventory (NBI) dataset was used to identify the material types for bridges that were new or replaced within the defined time period. The FHWA's Financial Management Information System (FMIS) and the 2007 NBI were used to identify the material types for bridges that were rehabilitated within the defined time period. Currently preventative maintenance projects are included in the rehabilitation totals.

The report, which is available at *http://www.fhwa.dot.gov/bridge/*

*britab.htm*, consists of the following tables:

- Construction Materials for New and Replaced Bridges, a summary report which includes Federal-aid highways and non-Federal-aid highways built in 2006 and 2005.
- Construction Materials for Rehabilitated Bridges, a summary report which includes Federal-aid and non-Federal-aid highways rehabilitated in 2006 and 2005.
- Construction Materials for Combined New, Replaced and Rehabilitated Bridges, a summary report which combines the first two tables cited above.
- Federal-aid Highways: Construction Materials for New and Replaced Bridges 2006, a detailed state-by-state report with counts and areas for Federal-aid bridges built or replaced in 2006.
- Federal-aid Highways: Construction Materials for New and Replaced Bridges 2005, a detailed state-by-state report with counts and areas for Federal-aid bridges built or replaced in 2005.
- Non-Federal-aid Highways: Construction Materials for New and Replaced Bridges 2006, a detailed state-by-state report with counts and areas for non-Federal-aid bridges built or replaced in 2006.
- Non-Federal-aid Highways: Construction Materials for New and Replaced Bridges 2005, a detailed state-by-state report with counts and areas for non-Federal-aid bridges built or replaced in 2005.
- Federal-aid Highways: Construction Materials for Rehabilitated Bridges 2006, a detailed state-by-state report with counts and areas for Federal-aid bridges rehabilitated in 2006.
- Federal-aid Highways: Construction Materials for Rehabilitated Bridges 2005, a detailed state-by-state report with counts and areas for Federal-aid bridges rehabilitated in 2005.
- Non-Federal-aid Highways: Construction Materials for Rehabilitated Bridges 2006, a detailed state-by-state report with counts and areas for non Federal-aid bridges rehabilitated in 2006.
- Non-Federal-aid Highways: Construction Materials for Rehabilitated Bridges 2005, a detailed state-by-state report with counts and areas for non Federal-aid bridges rehabilitated in 2005.
- Federal-aid Highways: Construction Materials for New, Replaced and Rehabilitated Bridges 2006, which combines the 2006 reports on new, replaced and rehabilitated Federal-aid bridges.
- Federal-aid Highways: Construction Materials for New, Replaced and Rehabilitated Bridges 2005, which combines the 2005 reports on new, replaced and rehabilitated non-Federal-aid bridges.
- Non-Federal-aid Highways: Construction Materials for New, Replaced and Rehabilitated Bridges 2006, which combines the 2006 reports on new, replaced and rehabilitated non Federal-aid bridges.
- Non-Federal-aid Highways: Construction Materials for New Replaced and Rehabilitated Bridges 2006, which combines the 2006 reports on new, replaced and rehabilitated non-Federal-aid bridges.

The tables provide data for two years: 2005 and 2006. The 2005 data is considered complete for new, replaced and rehabilitated bridges, with a minimal likelihood of upward changes in the totals. The 2006 data is considered partially complete for new bridges and complete for rehabilitated bridges, because many new bridges built in 2006 will not appear in the NBI until they are placed into service the following year. Therefore, next year's report will include 2006's data on new bridge construction, because the data will be complete.

Each table displays simple counts of bridges and total bridge deck area. Total bridge deck area is measured in square meters, by multiplying the bridge length by the deck width out-to-out. Culverts under fill are included in the counts but not in the areas because a roadway width is not collected. The data is categorized by the following material types, which are identified in the NBI: steel, concrete, pre-stressed concrete and other. The category ''Other'' includes wood, timber, masonry, aluminum, wrought iron, cast iron and other. Material type is the predominate type for the main span(s).

**Authority:** 23 U.S.C. 144(r); Sec. 1114(f), Pub. L. 109–59, 119 Stat. 1144.

Issued on: August 22, 2008.

**Thomas J. Madison, Jr.,**

*Administrator, Federal Highway Administration.*

[FR Doc. E8–20160 Filed 8–28–08; 8:45 am]

BILLING CODE 4910–22–P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket No. FRA–2000–7257; Notice No. 48]**

### Railroad Safety Advisory Committee; Notice of Meeting

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

**ACTION:** Announcement of Railroad Safety Advisory Committee (RSAC) Meeting.

**SUMMARY:** FRA announces the 36th meeting of the RSAC, a Federal advisory committee that develops railroad safety regulations through a consensus process. The RSAC meeting topics will include opening remarks from the FRA Administrator, and status reports will be provided by the Passenger Safety, Locomotive Safety Standards, Railroad Bridge, Medical Standards, Railroad Operating Rules, and Track Safety Standards Working Groups. There will be a Committee vote on the acceptance of the report from the Railroad Bridge Working Group and a possible vote on an expanded task statement for the Track Standards Working Group. Accident/incident reporting is on the agenda for discussion by the Committee and there may be a vote on a contingent task statement. This agenda is subject to change.

**DATES:** The meeting of the RSAC is scheduled to commence on Wednesday, September 10, 2008, at 9:30 a.m. and will adjourn at 4:30 p.m.

**ADDRESSES:** The RSAC meeting will be held at the National Housing Center, 1201 15th Street, NW., Washington, DC 20005. The meeting is open to the public on a first-come, first-serve basis, and is accessible to individuals with disabilities. Sign and oral interpretation can be made available if requested 10 calendar days before the meeting.

**FOR FURTHER INFORMATION CONTACT:** Larry Woolverton, RSAC Administrative Officer/Coordinator, FRA, 1200 New Jersey Avenue, SE., Mailstop 25, Washington, DC 20590, (202) 493–6212; or Grady Cothen, Deputy Associate Administrator for Safety, FRA, 1200 New Jersey Avenue, SE., Mailstop 25, Washington, DC 20590, (202) 493–6302.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), FRA is giving notice of a meeting of the RSAC. The RSAC was established to provide advice and recommendations to FRA on railroad safety matters. The RSAC is composed of 54 voting representatives from 31 member organizations, representing various rail industry perspectives. In addition, there are nonvoting advisory representatives from the agencies with railroad safety regulatory responsibility in Canada and Mexico, the National Transportation Safety Board, and the Federal Transit Administration. The diversity of the Committee ensures the requisite range of views and expertise necessary to discharge its responsibilities. See the

RSAC Web site for details on pending tasks at: *http://rsac.fra.dot.gov/.* Please refer to the notice published in the **Federal Register** on March 11, 1996 (61 FR 9740), for additional information about the RSAC.

Issued in Washington, DC on August 20, 2008.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. E8–20029 Filed 8–28–08; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket No. FRA–2000–7257; Notice No. 49]**

### Railroad Safety Advisory Committee (RSAC); Working Group Activity Update

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

**ACTION:** Announcement of Railroad Safety Advisory Committee (RSAC) working group activities.

**SUMMARY:** FRA is updating its announcement of RSAC's working group activities to reflect its current status.

**FOR FURTHER INFORMATION CONTACT:** Larry Woolverton, RSAC Coordinator, FRA, 1200 New Jersey Avenue, SE., Mailstop 25, Washington, DC 20590, (202) 493–6212; or Grady Cothen, Deputy Associate Administrator for Safety, FRA, 1200 New Jersey Avenue, SE., Mailstop 25, Washington, DC 20590, (202) 493–6302.

**SUPPLEMENTARY INFORMATION:** This notice serves to update FRA's last announcement of working group activities and status reports of May 22, 2008 (73 FR 29838). The 35th full RSAC meeting was held June 11, 2008, and the 36th meeting is scheduled for September 10, 2008, at the National Housing Center in Washington, DC.

Since its first meeting in April of 1996, the RSAC has accepted 25 tasks. The status for each of the open tasks is provided below:

### Open Tasks

*Task 96–4*—Tourist and Historic Railroads. Reviewing the appropriateness of the agency's current policy regarding the applicability of existing and proposed regulations to tourist, excursion, scenic, and historic railroads. This task was accepted on April 2, 1996, and a working group was established. The working group monitored the steam locomotive regulation task. Planned future activities involve the review of other regulations for possible adaptation to the safety needs of tourist and historic railroads. *Contact:* Grady Cothen, Jr., (202) 493–6302.

*Task 03–01*—Passenger Safety. This task includes updating and enhancing the regulations pertaining to passenger safety, based on research and experience. This task was accepted on May 20, 2003, and a working group was established. Prior to embarking on substantive discussions of a specific task, the working group set forth, in writing, a specific description of the task. The working group reports planned activity to the full Committee at each scheduled full RSAC meeting, including milestones for completion of projects and progress toward completion. At the first meeting held September 9–10, 2003, a consolidated list of issues was completed. At the second meeting held November 6–7, 2003, four task groups were established: emergency preparedness; mechanical; crashworthiness; and track/vehicle interaction. The task groups met and reported on activities for working group consideration at the third meeting held May 11–12, 2004, and a fourth meeting was held October 26–27, 2004. The Working Group met on March 21–22, 2006, and again on September 12–13, 2006, at which time the group agreed to establish a task force on general passenger safety. The full Passenger Safety Working Group met on April 17–18, 2007; December 11–12, 2007; and June 18, 2008. The next meeting is scheduled for November 13, 2008. *Contact:* Charles Bielitz, (202) 493–6314.

(Emergency Preparedness Task Force) At the working group meeting on March 9–10, 2005, the working group received and approved the consensus report of the Emergency Preparedness Task Force related to emergency communication, emergency egress, and rescue access. These recommendations were presented to, and approved by, the full RSAC on May 18, 2005. The working group met on September 7–8, 2005, and additional, supplementary recommendations were presented to, and accepted by, the full RSAC on October 11, 2005. The Notice of Proposed Rulemaking (NPRM) was published on August 24, 2006, and was open for comment until October 23, 2006. The working group agreed upon recommendations for the final rule, including resolution of final comments received, during its April 17–18, 2007, meeting. The recommendations were presented to, and approved by, the full RSAC on June 26, 2007. The final rule regarding passenger train emergency systems, focusing on emergency communication, emergency egress, and rescue access, was published on February 1, 2008 (73 FR 6370). The task force met on October 17–18, 2007, and reached consensus on draft rule text for a followup NPRM on passenger train emergency systems, focusing on low location emergency exit path marking, emergency lighting, and emergence signage. The task force presented the draft rule text to the Passenger Safety Working Group on December 11–12, 2007, and the consensus draft rule text was presented to, and approved by, full RSAC vote during the February 20, 2008 meeting. At its most recent meeting, which was held May 13–14, 2008, the task force recommended clarifying the applicability of backup emergency communication system requirements in the February 1, 2008, final rule, and FRA announced its intention to exercise limited enforcement discretion for a new provision amending instruction requirements for emergency window exit removal. The working group ratified these recommendations on June 19, 2008. No additional task force meetings are currently scheduled. *Contact:* Brenda Moscoso, (202) 493–6282.

(Mechanical Task Force) (Completed) Initial recommendations on mechanical issues (revisions to Title 49 Code of Federal Regulations (CFR) part 238) were approved by the full Committee on January 26, 2005. At the working group meeting of September 7–8, 2005, the task force presented additional perfecting amendments and the full RSAC approved them on October 11, 2005. An NPRM was published in the **Federal Register** on December 8, 2005 (70 FR 73070). Public comments were due by February 17, 2006. The final rule was published in the **Federal Register** on October 19, 2006 (71 FR 61835), effective December 18, 2006.

(Crashworthiness Task Force) Among its efforts, the Crashworthiness Task Force provided consensus recommendations on static-end strength that were adopted by the working group on September 7–8, 2005. The full Committee accepted the recommendations on October 11, 2005. The Front-End Strength of Cab Cars and Multiple-Unit Locomotives NPRM was published in the **Federal Register** on August 1, 2007 (72 FR 42016), with comments due by October 1, 2007. A number of comments were entered into the docket, and FRA is considering each of them in drafting a final rule. To demonstrate means of determining compliance with the crashworthiness requirements of the rule, FRA scheduled deformation tests as prescribed in the

NPRM. A dynamic impact test, per the performance standard, was conducted on April 16, 2008. Additionally, two quasi-static tests were conducted on June 25, 2008, and August 13, 2008. The objectives of the tests were to show alternative means for demonstrating compliance with dynamic performance and quasi-static strength-based standard outlined in the NPRM. The next task force meeting is scheduled for September 9–10, 2008. *Contact:* Gary Fairbanks, (202) 493–6322.

(Vehicle/Track Interaction Task Force) The task force is developing proposed revisions to 49 CFR parts 213 and 238, principally regarding high-speed passenger service. The task force met on October 9–11, 2007, and again on November 19–20, 2007, in Washington, DC, and presented the final task force report, final recommendations, and proposed rule text for approval by the Passenger Safety Working Group at the December 11–12, 2007, meeting. The final report and the proposed rule text were approved by the working group and were presented to, and approved by, full RSAC vote during the February 20, 2008, meeting. The group last met on February 27–28, 2008, and FRA is currently crafting an NPRM. No additional task force meetings are currently scheduled. *Contact:* John Mardente, (202) 493–1335.

(General Passenger Safety Task Force) At the working group meeting on April 17–18, 2007, the task force presented a progress report to the working group. The task force met on July 18–19, 2007, and afterwards, it reported proposed reporting cause codes for injuries involving the platform gap that was approved by the working group by mail ballot in September 2007. The full RSAC approved the recommendations for changes to 49 CFR part 225 accident/incident cause codes on October 25, 2007. The task force continues work on passenger train door securement, ''second train in station,'' trespasser incidents, and system safety based solutions by developing a regulatory approach to system safety. The General Passenger Safety Task Force presented draft guidance material for management of the gap that was considered and approved by the working group during the December 11–12, 2007, meeting and was presented and approved by full RSAC vote during the February 20, 2008, meeting. The group met April 23–24, 2008, and the next meeting is scheduled for November 4–6, 2008. *Contact:* Dan Knote, (631) 567–1596.

*Task 05–01*—Review of Roadway Worker Protection Issues. This task was accepted on January 26, 2005, to review 49 CFR part 214, Subpart C, Roadway Worker Protection, and related sections of Subpart A, and to recommend consideration of specific actions to advance the on-track safety of railroad employees and contractors engaged in maintenance-of-way activities throughout the general system of railroad transportation, including clarification of existing requirements. A working group was established and reported to the RSAC any specific actions identified as appropriate. The first meeting of the working group was held on April 12–14, 2005. The group drafted and accepted regulatory language for various revisions, clarifications, and additions to 32 separate items in 19 sections of the rule. However, two parties raised technical concerns regarding the draft language concerning electronic display of track authorities. The working group reported recommendations to the full Committee at the June 26, 2007, meeting. The FRA, through the NPRM process, is to address this issue along with eight additional items on which the working group was unable to reach a consensus. Comments were received and were considered during the drafting of the NPRM. In early 2008, the external working group members were solicited to review the consensus text for errata review. In order to address the heightened concerns raised with the current regulations for adjacent track on-track safety, an NPRM was published on July 17, 2008, that focused on this element of the Roadway Worker Protection rule alone. As this was an NPRM, FRA sought comment on the entire proposal, including those portions that FRA sought to clarify. However, on August 13, 2008, the NPRM was withdrawn to permit further consideration of the RSAC-reported consensus language. FRA is currently reviewing options concerning the smaller adjacent track on-track safety aspect of the rule, as well as the remaining changes to the rule. Target for completion of all items in the larger NPRM is spring of 2009. *Contact:* Christopher Schulte, (610) 521–8201.

*Task 05–02*—Reduce Human Factor-Caused Train Accident/Incidents. This task was accepted on May 18, 2005, to reduce the number of human factor-caused train accidents/incidents and related employee injuries. The Railroad Operating Rules Working Group was formed, and the group extensively reviewed the issues presented. The final working group meeting devoted to developing a proposed rule was held February 8–9, 2006. The working group was not able to deliver a consensus regulatory proposal, but did recommend that it be used to review comments on FRA's NPRM, which was published in the **Federal Register** on October 12, 2006 (FR 71 60372) with public comments due by December 11, 2006. Two reviews were held, one on February 8–9, 2007, and the other on April 4–5, 2007. Consensus was reached on four items and those items were presented and accepted by the full RSAC at the June 26, 2007, meeting. A final rule was published in the **Federal Register** on February 13, 2008 (73 FR 8442), with an effective date of April 14, 2008. Working group meetings were held on September 27–28, 2007; January 17–18, 2008; and May 21–22, 2008. The next scheduled meeting will occur on September 25–26, 2008. Contact: Douglas Taylor, (202) 493–6255.

*Task 06–01*—Locomotive Safety Standards. This task was accepted on February 22, 2006, to review 49 CFR part 229, Railroad Locomotive Safety Standards, and revise as appropriate. A working group was established with the mandate to report any planned activity to the full Committee at each scheduled full RSAC meeting, to include milestones for completion of projects and progress toward completion. The first working group meeting was held May 8–10, 2006. Working group meetings were held on August 8–9, 2006; September 25–26, 2006; and October 30–31, 2006, and the working group presented recommendations regarding revisions to requirements for locomotive sanders to the full RSAC on September 21, 2006. The NPRM regarding sanders was published in the **Federal Register** on March 6, 2007 (72 FR 9904). Comments received were discussed by the working group for clarification, and FRA published a final rule on October 19, 2007 (72 FR 59216). The working group is continuing the review of 49 CFR part 229 with a view to proposing further revisions to update the standards. The working group met on January 9–10, 2007; November 27–28, 2007; February 5–6, 2008; May 20–21, 2008; and August 5–6, 2008. The next meeting is scheduled for October 22–23, 2008, and a followup meeting is scheduled for January 6–7, 2009. *Contact*: George Scerbo, (202) 493–6249.

*Task 06–02*—Track Safety Standards and Continuous Welded Rail. Section 9005 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109–59, ''SAFETEA–LU''), the 2005 surface transportation authorization act, requires FRA to issue requirements for inspection of joint bars in continuous welded rail (CWR) to detect cracks that could affect the integrity of the track structure. See 49 U.S.C. 20142(e). FRA published an interim final rule (IFR),

establishing new requirements for inspections, on November 2, 2005 (70 FR 66288). On October 11, 2005, FRA offered the RSAC a task to review comments on this IFR, but the conditions could not be established under which the Committee could have undertaken this with a view toward consensus. Comments on the IFR were received through December 19, 2005. FRA reviewed the comments. On February 22, 2006, the RSAC accepted this task to review and revise the CWR related to provisions of the Track Safety Standards (TSS), with particular emphasis on reduction of derailments and consequent injuries and damage caused by defective conditions, including joint failures, in track using CWR; a working group was established. The working group will report any planned activity to the full Committee at each scheduled full RSAC meeting, including milestones for completion of projects and progress toward completion. The first working group meeting was held April 3–4, 2006, at which time the working group reviewed comments on the IFR. The second working group meeting was held April 26–28, 2006. The working group also met May 24–25, 2006, and July 19–20, 2006. The working group reported consensus recommendations for the final rule that were accepted by the full RSAC Committee by mail ballot on August 11, 2006. The final rule was published in the **Federal Register** on October 11, 2006 (71 FR 59677). The working group continued review of 49 CFR 213.119 with a view to proposing further revisions to update the standards. The working group met January 30–31, 2007; April 10–11, 2007; June 27–28, 2007; August 15–16, 2007; October 23–24, 2007; and January, 8–9, 2008. The working group reported consensus recommendations for revisions to 49 CFR Section 213.119 regulations to the full RSAC on February 20, 2008, and the recommendations were accepted. FRA is preparing an NPRM. No additional working group meetings are currently scheduled on this issue. *Contact*: Ken Rusk, (202) 493–6236.

*Task 06–03*—Medical Standards for Safety-Critical Personnel. This task was accepted on September 21, 2006, to enhance the safety of persons in the railroad operating environment and the public by establishing standards and procedures for determining the medical fitness for duty of personnel engaged in safety-critical functions. A working group has been established and will report any planned activity to the full Committee at each scheduled full RSAC meeting, including milestones for completion of projects and progress toward completion. The first working group meeting was held December 12–13, 2006. The working group has held followup meetings on the following dates: February 20–21, 2007; July 24–25, 2007; August 29–30, 2007; October 31–November 1, 2007; December 4–5, 2007; February 13–14, 2008; March 26–27, 2008; and April 22–23, 2008. A task force of physicians was established in May 2007 to work on specific medical exam-related issues. The task force of physicians has had meetings or conference calls on July 24, 2007; August 20, 2007; October 15, 2007; October 31, 2007; and June 23–24, 2008. The next meeting of the task force is scheduled for September 8–10, 2008. *Contact:* Alan Misiaszek, (202) 493–6002.

*Task 07–01*—Track Safety Standards. This task was accepted on February 22, 2007, to consider specific improvements to the TSS or other responsive actions, supplementing work already under way on CWR, specifically to: Review controls applied to reuse of rail in CWR ''plug rail,'' review the issue of cracks emanating from bond wire attachments, consider improvements in the TSS related to fastening of rail to concrete ties, and ensure a common understanding within the regulated community concerning requirements for internal rail flaw inspections. The tasks were assigned to the Track Safety Standards Working Group. The working group will report any planned activity to the full Committee at each scheduled full RSAC meeting, including milestones for completion of projects and progress toward completion. The first working group meeting was held on June 27–28, 2007, and the group met again on August 15–16, 2007, and October 23–24, 2007. Two task forces were created under the working group: Concrete Ties and Rail Integrity Task Forces. The Concrete Ties Task Force met on November 26–27, 2007; February 13–14, 2008; April 16–17, 2008; and July 9–10, 2008. The next Concrete Ties Task Force meeting is scheduled for September 17–18, 2008. The Rail Integrity Task Force met on November 28–29, 2007; February 12–13, 2008; April 15–16, 2008; and July 8–9, 2008. The next meeting is scheduled for September 16–17, 2008. *Contact:* Ken Rusk, (202) 493–6236.

*Task 08–01*—Report on the Nation's Railroad Bridges. This task was accepted on February 20, 2008, to report to the Federal Railroad Administrator on the current state of railroad bridge safety management, update the findings and conclusions of the 1993 Summary Report of the FRA Railroad Bridge Safety Survey, and include recommendations for further action with a target date of November 3, 2008. The working group first met on April 24–25, 2008, with followup meetings held on June 12–13, 2008, and August 7–8, 2008. The working group will present findings and a final report to the RSAC during the September 10, 2008, full Committee meeting. *Contact:* Gordon Davids, (202) 230–9568.

**Completed Tasks**

*Task 96–1*—(Completed) Revising the freight power brake regulations.

*Task 96–2*—(Completed) Reviewing and recommending revisions to the TSS (49 CFR part 213).

*Task 96–3*—(Completed) Reviewing and recommending revisions to the radio standards and procedures (49 CFR part 220).

*Task 96–5*—(Completed) Reviewing and recommending revisions to steam locomotive inspection standards (49 CFR part 230).

*Task 96–6*—(Completed) Reviewing and recommending revisions to miscellaneous aspects of the regulations addressing locomotive engineer certification (49 CFR part 240).

*Task 96–7*—(Completed) Developing roadway maintenance machines (on-track equipment) safety standards.

*Task 96–8*—(Completed) This planning task evaluated the need for action responsive to recommendations contained in a report to Congress titled, *Locomotive Crashworthiness & Working Conditions*.

*Task 97–1*—(Completed) Developing crashworthiness specifications (49 CFR part 229) to promote the integrity of the locomotive cab in accidents resulting from collisions.

*Task 97–2*—(Completed) Evaluating the extent to which environmental, sanitary, and other working conditions in locomotive cabs affect the crew's health and the safe operation of locomotives, proposing standards where appropriate.

*Task 97–3*—(Completed) Developing event recorder data survivability standards.

*Task 97–4*—and *Task 97–5*—(Completed) Defining Positive Train Control (PTC) functionalities, describing available technologies, evaluating costs and benefits of potential systems, and considering implementation opportunities and challenges, including demonstration and deployment.

*Task 97–6*—(Completed) Revising various regulations to address the safety implications of processor-based signal and train control technologies,

including communications-based operating systems.

*Task 97–7*—(Completed) Determining damages qualifying an event as a reportable train accident.

*Task 00–1*—(Completed-task withdrawn) Determining the need to amend regulations protecting persons who work on, under, or between rolling equipment and persons applying, removing, or inspecting rear end marking devices (Blue Signal Protection).

*Task 01–1*—(Completed) Developing conformity of FRA's regulations for accident/incident reporting (49 CFR part 225) to revised regulations of the Occupational Safety and Health Administration, U.S. Department of Labor, and to make appropriate revisions to the *FRA Guide for Preparing Accident/Incident Reports* (Reporting Guide).

Please refer to the notice published in the **Federal Register** on March 11, 1996 (61 FR 9740), for more information about the RSAC.

Issued in Washington, DC on August 20, 2008.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. E8–20030 Filed 8–28–08; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2008–0135]**

### Decision that Certain Nonconforming Motor Vehicles Are Eligible for Importation

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Notice of decision by NHTSA that certain nonconforming motor vehicles are eligible for importation.

**SUMMARY:** This document announces decisions by NHTSA that certain motor vehicles not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS) are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for sale in the United States and certified by their manufacturers as complying with the safety standards, and they are capable of being readily altered to conform to the standards or because they have safety features that comply with, or are capable of being altered to comply with, all applicable FMVSS.

**DATES:** These decisions became effective on the dates specified in Annex A.

**FOR FURTHER INFORMATION CONTACT:** Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

**SUPPLEMENTARY INFORMATION:**

#### Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and/or sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable FMVSS based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

NHTSA received petitions from registered importers to decide whether the vehicles listed in Annex A to this notice are eligible for importation into the United States. To afford an opportunity for public comment, NHTSA published notice of these petitions as specified in Annex A. The reader is referred to those notices for a thorough description of the petitions. No substantive comments were received in response to these notices. Based on its review of the information submitted by the petitioners, NHTSA has decided to grant the petitions.

#### Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. Vehicle eligibility numbers assigned to vehicles admissible under this decision are specified in Annex A.

#### Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that each motor vehicle listed in Annex A to this notice, which was not originally manufactured to comply with all applicable FMVSS, is either (1) substantially similar to a motor vehicle manufactured for importation into and/or sale in the United States, and certified under 49 U.S.C. 30115, as specified in Annex A, and is capable of being readily altered to conform to all applicable FMVSS or (2) has safety features that comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards.

**Authority:** 49 U.S.C. 30141(a)(1)(A), (a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 25, 2008.

**Claude H. Harris,**

*Director, Office of Vehicle Safety Compliance.*

#### Annex A—Nonconforming Motor Vehicles Decided To Be Eligible for Importation

1. Docket No. NHTSA–2007–0023

Nonconforming Vehicles: 2001 Chevrolet Tahoe multipurpose passenger vehicles.
Substantially Similar U.S. Certified Vehicles: 2001 Chevrolet Tahoe multipurpose passenger vehicles.
Notice of Petition Published at: 72 FR 63651 (November 9, 2007).
Vehicle Eligibility Number: VSP–501 (effective date January 16, 2008).

2. Docket No. NHTSA–2007–0022

Nonconforming Vehicles: 2005 Volkswagen Golf passenger cars.
Substantially Similar U.S. Certified Vehicles: 2005 Volkswagen Golf passenger cars.
Notice of Petition Published at: 72 FR 63229 (November 8, 2007).
Vehicle Eligibility Number: VSP–502 (effective date January 16, 2008).

3. Docket No. NHTSA–2008–0051

Nonconforming Vehicles: 2000 Chevrolet Tahoe multipurpose passenger vehicle.

Substantially Similar U.S. Certified Vehicles: 2000 Chevrolet Tahoe multipurpose passenger vehicle.
Notice of Petition Published at: 73 FR 16960 (March 31, 2008).
Vehicle Eligibility Number: VSP–504 (effective date May 19, 2008).

4. Docket No. NHTSA–2008–0062

Nonconforming Vehicles: 2005 Jeep Liberty multipurpose passenger vehicle.
Substantially Similar U.S. Certified Vehicles: 2005 Jeep Liberty multipurpose passenger vehicle.
Notice of Petition Published at: 73 FR 19135 (April 8, 2008).
Vehicle Eligibility Number: VSP–505 (effective date June 2, 2008).

5. Docket No. NHTSA–2008–0092

Nonconforming Vehicles: 2007 Harley Davidson FX, FL, XL, & VR Series motorcycles.
Substantially Similar U.S. Certified Vehicles: 2007 Harley Davidson FX, FL, XL, & VR Series motorcycles.
Notice of Petition Published at: 73 FR 27025 (May 12, 2008).
Vehicle Eligibility Number: VSP–506 (effective date June 25, 2008).

6. Docket No. NHTSA–2008–0110

Nonconforming Vehicles: 2004–2005 Ferrari 575 passenger cars.
Substantially Similar U.S. Certified Vehicles: 2004–2005 Ferrari 575 passenger cars.
Notice of Petition Published at: 73 FR 32784 (June 10, 2008).
Vehicle Eligibility Number: VSP–507 (effective date July 16, 2008).

7. Docket No. NHTSA–2008–0117

Nonconforming Vehicles: 2006 Lamborghini Gallardo Roadster passenger cars manufactured between January 1, 2006 and August 31, 2006.
Substantially Similar U.S. Certified Vehicles: 2006 Lamborghini Gallardo Roadster passenger cars manufactured between January 1, 2006 and August 31, 2006.
Notice of Petition Published at: 73 FR 36375 (June 26, 2008).
Vehicle Eligibility Number: VSP–508 (effective date August 4, 2008).

8. Docket No. NHTSA–2008–0120

Nonconforming Vehicles: 2004 Land Rover Range Rover multipurpose passenger vehicles.
Substantially Similar U.S. Certified Vehicles: 2004 Land Rover Range Rover multipurpose passenger vehicles.
Notice of Petition Published at: 73 FR 36373 (June 26, 2008).
Vehicle Eligibility Number: VSP–509 (effective date August 4, 2008).

9. Docket No. NHTSA–2008–0094

Nonconforming Vehicles: 1988–1994 Alpina B12 5.0 Sedan passenger cars.
Because there are no substantially similar U.S.-certified version 1988–1994 Alpina B12 5.0 Sedan passenger cars, the petitioner sought import eligibility under 49 U.S.C. 30141(a)(1)(B).
Notice of Petition Published at: 73 FR 27890 (May 14, 2008).
Vehicle Eligibility Number: VCP–41 (effective date June 25, 2008).

[FR Doc. E8–20062 Filed 8–28–08; 8:45 am]
BILLING CODE 4910–59–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2008–0143]**

### Plan for Evaluating the Effectiveness of Vehicle and Behavioral Programs, 2008–2012

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Request for comments.

**SUMMARY:** This notice announces the publication by NHTSA of its Evaluation Program Plan for 2008–2012. The report describes the agency's ongoing and planned evaluations of its existing Federal Motor Vehicle Safety Standards [49 CFR part 571] and other vehicle-safety, behavioral-safety and consumer programs. It also summarizes the results of completed evaluations. The agency's evaluation program responds to Executive Order 12866, which provides for Government-wide review of existing significant Federal regulations. This notice solicits public review and comment on the evaluation plan. Comments received will be used to improve the plan.

**DATES:** Comments must be received no later than December 29, 2008.

**ADDRESSES:** *Report:* The Evaluation Program Plan is available on the Internet for viewing online in PDF format at *http://www-nrd.nhtsa.dot.gov/Pubs/810983.PDF.* You may obtain a copy of the plan free of charge by sending a self-addressed mailing label to Charles J. Kahane (NVS–431), National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

*Comments:* You may submit comments [identified by Docket Number NHTSA–2008–0143] by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 am and 5 pm Eastern Time, Monday through Friday, except Federal holidays.

You may call Docket Management at 202–366–9826.

*Instructions:* For detailed instructions on submitting comments, see the Procedural Matters section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Charles J. Kahane, Chief, Evaluation Division, NVS–431, National Center for Statistics and Analysis, National Highway Traffic Safety Administration, Room W53–312, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–2560. *E-mail: chuck.kahane@dot.gov.*

*For information about NHTSA's evaluations of the effectiveness of existing regulations and programs:* Visit the NHTSA Web site at *http://www.nhtsa.dot.gov* and click ''NCSA'' near the upper right corner on the home page; then click ''Regulatory Evaluation'' under ''Browse Topics'' on the ''NCSA'' page.

**SUPPLEMENTARY INFORMATION:** NHTSA has rigorously evaluated its major programs as a matter of policy since 1970. The evaluation of the effectiveness of the Federal Motor Vehicle Safety Standards (FMVSS) began in 1975. The Government Performance and Results Act of 1993 and Executive Order 12866, ''Regulatory Planning and Review,'' issued in October 1993 (58 FR 51735), now oblige all Federal agencies to evaluate their existing programs and regulations. Previously, Executive Order 12291, issued in February 1981 (46 FR 13193), also required reviews of existing regulations. Even before 1981, however, NHTSA was a leader among Federal agencies in evaluating the effectiveness of existing regulations and technologies. There are large databases of motor vehicle crashes that can be analyzed to find out what vehicle and behavioral safety programs work best.

This five-year plan for the Evaluation Division of the Office of Regulatory

Analysis and Evaluation (ORAE) in NHTSA's National Center for Statistics and Analysis presents and discusses the vehicle and behavioral programs, regulations, technologies, and related areas ORAE proposes to evaluate, and it summarizes the findings of ORAE's past evaluations. Depending on scope, evaluations typically take a year or substantially more, counting initial planning, contracting for support, OMB clearance for surveys, data collection, analysis, internal review, approvals, publication, review of public comments, and the last phase of preparing recommendations for subsequent agency action.

Most of NHTSA's crashworthiness and several crash avoidance standards have been evaluated at least once since 1975. A number of consumer-oriented regulations, e.g., bumpers, theft protection, fuel economy and NCAP also have been evaluated. So have promising safety technologies that were at the time not mandatory under Federal regulations, such as electronic stability control for passenger vehicles. Based on these evaluations, NHTSA estimated that vehicle safety technologies had saved an estimated 328,551 lives from 1960 through 2002 and that the FMVSS added an average of $839 (in 2002 dollars) to the cost of a new passenger car and $711 to an LTV in model year 2001 (70 FR 3975).

ORAE's plan for calendar years 2008–2012 includes evaluations of new and existing vehicle and behavioral safety programs, regulations, technologies and consumer information programs. Vehicle safety evaluations address crash avoidance, crashworthiness, compatibility and recalls. They study passenger cars, LTVs, heavy trucks, and motorcycles. Behavioral safety evaluations address impaired driving, occupant protection, child passenger safety, motorcycle safety, pedestrians and emergency care (injury survivability).

The plan will be periodically updated in response to public and agency needs, with a complete revision scheduled every five years. The most recent plan before this one was published on January 27, 2004 (69 FR 3992).

## Procedural Matters

*How can I influence NHTSA's thinking on this subject?*

NHTSA welcomes public review of the evaluation plan and invites the reviewers to comment about the selection, priority, and schedule of the regulations to be evaluated. The agency is interested in learning of any additional data that may be useful in the evaluations. NHTSA will submit to the Docket a response to the comments and, if appropriate, will supplement or revise the evaluation plan.

*How do I prepare and submit comments?*

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the Docket number of this document (NHTSA–2008–0143) in your comments.

Your primary comments must not be more than 15 pages long (49 CFR 553.21). However, you may attach additional documents to your primary comments. There is no limit on the length of the attachments.

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 (65 FR 19477) or you may visit *http://regulations.gov.*

Please send two paper copies of your comments to Docket Management, fax them, or use the Federal eRulemaking Portal. The mailing address is U.S. Department of Transportation, Docket Management Facility, M–30, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. The fax number is 1–202–493–2251. To use the Federal eRulemaking Portal, go to *http://www.regulations.gov* and follow the online instructions for submitting comments.

We also request, but do not require, you to send a copy to Charles J. Kahane, Chief, Evaluation Division, NVS–431, National Highway Traffic Safety Administration, Room W53–312, 1200 New Jersey Avenue, SE., Washington, DC 20590 (or e-mail them to *chuck.kahane@dot.gov).* He can check if your comments have been received at the Docket and he can expedite their review by NHTSA.

*How can I be sure that my comments were received?*

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

*How do I submit confidential business information?*

If you wish to submit any information under a claim of confidentiality, send three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Include a cover letter supplying the information specified in our confidential business information regulation (49 CFR part 512).

In addition, send two copies from which you have deleted the claimed confidential business information to U.S. Department of Transportation, Docket Management Facility, M–30, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or submit them via the Federal eRulemaking Portal.

*Will the agency consider late comments?*

In our response, we will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

*How can I read the comments submitted by other people?*

You may read the materials placed in the docket for this document (e.g., the comments submitted in response to this document by other interested persons) at any time by going to *http://www.regulations.gov.* Follow the online instructions for accessing the dockets. You may also read the materials at the Docket Management Facility by going to the street address given above under **ADDRESSES**. The Docket Management Facility is open between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

**Authority:** 49 U.S.C. 30111, 30168; delegation of authority at 49 CFR 1.50 and 501.8.

**James F. Simons,**

*Director, Office of Regulatory Analysis and Evaluation.*

[FR Doc. E8–20061 Filed 8–28–08; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–6 (Sub-No. 465X)]**

### BNSF Railway Company—Abandonment Exemption—in King County, WA

On August 11, 2008, BNSF Railway Company (BNSF) filed with the Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a 12.55-mile line of railroad extending from milepost 11.25 near Wilburton to milepost 23.80 in Woodinville, King County, WA. The line traverses United States Postal Service Zip Codes 98004, 98005, 98011, 98033, 98034, and 98072.

In addition, BNSF seeks exemption from the offer of financial assistance (OFA) and public use provisions at 49 U.S.C. 10904 and 49 U.S.C. 10905, respectively. In support, BNSF contends that an exemption from these provisions is necessary to permit conveyance of the line and its physical assets to the Port of Seattle (Port).[1] BNSF has also agreed to rail bank the line with King County which will serve as interim trail user. These additional exemption requests will be addressed in the final decision.

The segment proposed to be abandoned is part of a rail line that is currently the subject of three separate proceedings. *In The Port of Seattle—Acquisition Exemption—Certain Assets of BNSF Railway Company,* STB Finance Docket No. 35128 (STB served June 20, 2008), the Port filed a notice of exemption to acquire from BNSF the right-of-way, track, and other property and physical assets located on the line between milepost 23.80 and milepost 38.25. A portion of that segment, between milepost 38.01 and milepost 38.25, was included in a notice of exemption filed in *The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—In Snohomish County, WA,* STB Docket No. AB–6 (Sub-No. 422X) (STB served July 2, 2004), in which BNSF sought authorization to abandon and discontinue service over the line of railroad between milepost 38.01 and milepost 39.00. By decision served on December 18, 2007, the consummation deadline for BNSF's abandonment of the line at issue in that proceeding was extended until December 31, 2008. By letter received on July 21, 2008, BNSF advised the Board that it had consummated the abandonment between milepost 38.25 and milepost 39.00, and that the remainder of the line, between milepost 38.01 and milepost 38.25, would be retained for railroad purposes. Lastly, in *GNP Rly Inc.—Modified Rail Certificate—In Snohomish County, WA,* STB Finance Docket No. 35151 (STB served Aug. 13, 2008), the Board granted GNP Rly Inc.'s application for a modified certificate of public convenience and necessity to lease and operate a segment of the line in Snohomish County, WA, extending from milepost 39.1 to milepost 39.3.

Based on the connection of the line at issue in this proceeding with the line segments discussed above, BNSF, the Port, and King County, as well as other interested persons, are requested to submit additional information to clarify their arrangements and intentions regarding future service on these line segments. BNSF states in its petition that an agreement has been entered into to convey the line at issue here to the Port. However, BNSF does not explain how this agreement would allow BNSF to enter into an agreement with King County for King County to serve as interim trail user. Further, it is unclear what rail service, if any, is anticipated or would be provided and whether the above-mentioned line segments would remain sufficiently connected to allow for any freight or passenger rail service.

The line does not contain federally granted rights-of-way. Any documentation in BNSF's possession will be made available promptly to those requesting it.

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).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by November 28, 2008.

Any OFA under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption, unless the Board grants the requested exemption from the OFA process. Each OFA must be accompanied by a $1,500 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Unless the Board grants the requested exemption from the public use provisions, any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than September 18, 2008. Each trail use request must be accompanied by a $200 filing fee. *See* 49 CFR 1002.2(f)(27)(i).

All filings in response to this notice must refer to STB Docket No. AB–6 (Sub-No. 465X) and must be sent to: (1) Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001; and (2) Kristy Clark, BNSF Railway Company, 2500 Lou Menk Drive, AOB–3, Fort Worth, TX 76131. Replies to the petition are due on or before September 18, 2008.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 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 1–800–877–8339.]

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. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov.*''

Decided: August 25, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Anne K. Quinlan,**

*Acting Secretary.*

[FR Doc. E8–20172 Filed 8–28–08; 8:45 am]

**BILLING CODE 4915–01–P**

[1] BNSF and the Port have entered into an agreement pursuant to which BNSF will donate to the Port the right-of-way, track, and other property and physical assets located on the line between milepost 11.25 and milepost 23.45. Pursuant to a separate agreement, BNSF will sell to the Port the right-of-way, track, and other property and physical assets located on the line between milepost 23.45 and milepost 23.80.

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–286 (Sub–No. 5X)]**

### The New York, Susquehanna and Western Railway Corporation—Discontinuance of Service Exemption—in Broome and Chenango Counties, NY

The New York, Susquehanna and Western Railway Corporation (NYS&W) has filed a verified notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue service over a portion of NYS&W's line of railroad known as the Utica Main Line between milepost 202.62 at or near Chenango Forks, Broome County, and milepost 243.64 at or near Sherburne, Chenango County, NY, a distance of approximately 41.02 miles.[1] The line traverses United States Postal Service Zip Codes 13460, 13746, 13778, 13814, 13815 and 13830.

NYS&W has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) all overhead traffic has been rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 1, 2008, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA for continued rail service under 49 CFR 1152.27(c)(2),[2] must be filed by September 8, 2008.[3] Petitions to reopen must be filed by September 18, 2008, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to NYS&W's representative: Eric M. Hocky, Thorp Reed & Armstrong, LLP, One Commerce Square, 2005 Market Street, Suite 1910, Philadelphia, PA 19103.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: August 25, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Anne K. Quinlan,**

*Acting Secretary.*

[FR Doc. E8–20073 Filed 8–28–08; 8:45 am]

**BILLING CODE 4915–01–P**

[1] NYS&W states that it will use the discontinued line for rail car storage and other private uses. NYS&W also states that the title to the property is currently held by the Broome and Chenango County Industrial Development Authorities.

[2] Effective July 18, 2008, the filing fee for an OFA increased to $1,500. *See Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services—2008 Update,* STB Ex Parte No. 542 (Sub–No. 15) (STB served June 18, 2008).

[3] Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Likewise, no environmental or historical documentation is required here under 49 CFR 1105.6(c) and 1105.8(b), respectively.

## DEPARTMENT OF THE TREASURY

### Departmental Offices; Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on an information collection that is due for renewed approval by the Office of Management and Budget. The Office of International Affairs within the Department of the Treasury is soliciting comments concerning recordkeeping requirements associated with Reporting of International Capital and Foreign Currency Transactions and Positions—31 CFR Part 128.

**DATES:** Written comments should be received on or before October 28, 2008 to be assured of consideration.

**ADDRESSES:** Direct all written comments on international capital transactions and positions to: Dwight Wolkow, International Portfolio Investment Data Systems, Department of the Treasury, Room 5422, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. In view of possible delays in mail delivery, please also notify Mr. Wolkow by e-mail (*dwight.wolkow@do.treas.gov*), FAX (202–622–2009) or telephone (202–622–1276).

Direct all written comments on foreign currency transactions and positions to: Timothy Dulaney, Department of the Treasury, Room 2313, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. In view of possible delays in mail delivery, please also notify Mr. Dulaney by e-mail (*Tim.Dulaney@do.treas.gov*), FAX (202–622–2021) or telephone (202–622–3121).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information on international capital transactions and positions should be directed to Mr. Wolkow. Requests for additional information on foreign currency transactions and positions should be directed to Mr. Dulaney.

**SUPPLEMENTARY INFORMATION:**

*Title:* 31 CFR Part 128, Reporting of International Capital and Foreign Currency Transactions and Positions.

*OMB Number:* 1505–0149.

*Abstract:* 31 CFR Part 128 establishes general guidelines for reporting on United States claims on and liabilities to foreigners; on transactions in securities with foreigners; and on the monetary reserves of the United States as provided for by the International Investment and Trade in Services Survey Act and the Bretton Woods Agreements Act. In addition, 31 CFR Part 128 establishes general guidelines for reporting on the nature and source of foreign currency transactions of large U.S. business enterprises and their foreign affiliates. This regulation includes a recordkeeping requirement, § 128.5, which is necessary to enable the Office of International Affairs to verify reported information and to secure additional information concerning reported information as may be necessary. The recordkeepers are U.S. persons required to file reports covered by these regulations. The forms prescribed by the Secretary and covered by this regulation, § 128.1(c), are Treasury International Capital (TIC) Forms BC, BL–1, BL–2, BQ–1, BQ–2, BQ–3, CQ–1, CQ–2, D, S, and Treasury Foreign Currency Forms FC–1, FC–2, and FC–3.

*Current Actions:* No changes to recordkeeping requirements are proposed at this time. Type of Review: Extension.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Recordkeepers:* 1,620.

*Estimated Average Time per Respondent:* one-third hour per respondent per filing.

*Estimated Total Annual Burden Hours:* 5,180 hours, based on 9.6 responses per year.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: (a) Whether the recordkeeping requirements in 31 CFR Part 128.5 are necessary for the proper performance of the functions of the Office, including whether the information will have practical uses; (b) the accuracy of the above estimate of the burdens; (c) ways to enhance the quality, usefulness and clarity of the information to be collected; (d) ways to minimize the reporting and/or record keeping burdens on respondents, including the use of information technologies to automate the collection of the data; and (e) estimates of capital or start-up costs of operation, maintenance and purchase of services to provide information.

**Timothy D. Dulaney, Dwight Wolkow,**

*Administrator, International Portfolio Investment Data Systems.*

[FR Doc. E8–20024 Filed 8–28–08; 8:45 am]

BILLING CODE 4810–25–P

## DEPARTMENT OF VETERANS AFFAIRS

## [OMB Control No. 2900–0519]

## Proposed Information Collection (Locality Pay System for Nurses and Other Health Care Personnel) Activity; Comment Request

**AGENCY:** Veterans Health Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine locality pay rates for nurses at VA facilities.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before October 28, 2008.

**ADDRESSES:** Submit written comments on the collection of information through *http://www.Regulations.gov*; or to Mary Stout, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *mary.stout@va.gov*. Please refer to ''OMB Control No. 2900–0519'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Mary Stout (202) 461–5867 or FAX (202) 273–9381.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Locality Pay System for Nurses and Other Health Care Personnel, VA Form 10–0132.

*OMB Control Number:* 2900–0519.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* VA Form 10–0132 is used to collect data from the Bureau of Labor Statistics or other third party industry surveys to determine locality pay system for certain health care personnel. VA medical facility Directors use the data collected to determine the appropriate pay scale for registered nurses, nurse anesthetists, and other health care personnel.

*Affected Public:* Business or other for-profit.

*Estimated Annual Burden:* 263 hours.

*Estimated Average Burden per Respondent:* 45 minutes.

*Frequency of Response:* Annually.

*Estimated Number of Respondents:* 351.

Dated: August 22, 2008.

By direction of the Secretary:

**Denise McLamb,**

*Program Analyst, Records Management Service.*

[FR Doc. E8–20114 Filed 8–28–08; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Friday,
August 29, 2008

# Part II

# Department of Housing and Urban Development

## Federal Property Suitable as Facilities To Assist the Homeless; Notice

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5186–N–35]**

## 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.

**FOR FURTHER INFORMATION CONTACT:** Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7266, 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 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Rita, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Army:* Ms. Veronica Rines, Headquarters, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, 2511 Jefferson Davis Hwy., Arlington, VA 22202; (703) 601–2545. (These are not toll-free numbers.)

Dated: August 21, 2008.

**Mark R. Johnston,**

*Deputy Assistant Secretary for Special Needs.*

## Title V, Federal Surplus Property Program Federal Register Report for 08/29/2008

**Suitable/Available Properties**

*Building*

Alaska

Bldg. 00001
Kiana Natl Guard Armory
Kiana AK 99749
Landholding Agency: Army
Property Number: 21200340075
Status: Excess
Comments: 1200 sq. ft., butler bldg., needs repair, off-site use only

Bldg. 00001
Holy Cross Armory
High Cross AK 99602
Landholding Agency: Army
Property Number: 21200710051
Status: Excess
Comments: 1200 sq. ft. armory, off-site use only

Bldg. 105
Ft. Richardson
Ft. Richardson AK 99505
Landholding Agency: Army
Property Number: 21200820144
Status: Excess
Comments: 4992 sq. ft., most recent use—housing, off-site use only

**Suitable/Available Properties**

*Building*

Alaska

Bldgs. 112, 113, 114, 115
Ft. Richardson
Ft. Richardson AK 99505
Landholding Agency: Army
Property Number: 21200820145
Status: Excess
Comments: 5184 sq. ft., most recent use—housing, off-site use only

Bldgs. 120, 129, 139, 148
Ft. Richardson
Ft. Richardson AK 99505
Landholding Agency: Army
Property Number: 21200820146
Status: Excess
Comments: 4766 sq. ft., most recent use—housing, off-site use only

Bldg. 136
Ft. Richardson
Ft. Richardson AK 99505
Landholding Agency: Army
Property Number: 21200820147
Status: Excess
Comments: 2383 sq. ft., most recent use—housing, off-site use only

Bldgs. 366, 367, 371, 373
Ft. Richardson
Ft. Richardson AK 99505
Landholding Agency: Army
Property Number: 21200820148
Status: Excess
Comments: 13,743 sq. ft., most recent use—housing, off-site use only

**Suitable/Available Properties**

*Building*

Alaska

Bldgs. 369, 372
Ft. Richardson
Ft. Richardson AK 99505
Landholding Agency: Army
Property Number: 21200820149
Status: Excess
Comments: 12,642 sq. ft., most recent use—housing, off-site use only

Bldgs. 392, 394
Ft. Richardson
Ft. Richardson AK 99505
Landholding Agency: Army
Property Number: 21200820150
Status: Excess
Comments: 18,496 sq. ft., most recent use—housing, off-site use only

12 Bldgs.
Ft. Richardson
Ft. Richardson AK 99505
Landholding Agency: Army
Property Number: 21200820151
Status: Excess
Directions: 413, 414, 415, 416, 417, 418, 424, 425, 427, 428, 429, 431
Comments: 13,056 sq. ft., most recent use—housing, off-site use only

**Suitable/Available Properties**

*Building*

Arizona

Bldg. S–306
Yuma Proving Ground
Yuma Co: Yuma/La Paz AZ 85365–9104
Landholding Agency: Army
Property Number: 21199420346
Status: Unutilized
Comments: 4103 sq. ft., 2-story, needs major rehab, off-site use only

Bldg. 503, Yuma Proving Ground
Yuma Co: Yuma AZ 85365–9104
Landholding Agency: Army
Property Number: 21199520073
Status: Underutilized
Comments: 3789 sq. ft., 2-story, major structural changes required to meet floor loading code requirements, presence of asbestos, off-site use only

Bldg. 43002
Fort Huachuca
Cochise AZ 85613–7010
Landholding Agency: Army
Property Number: 21200440066
Status: Excess
Comments: 23,152 sq. ft., presence of asbestos/lead paint, most recent use—dining, off-site use only

**Suitable/Available Properties**

*Building*

California

Bldgs. 18026, 18028
Camp Roberts
Monterey CA 93451–5000
Landholding Agency: Army
Property Number: 21200130081
Status: Excess
Comments: 2024 sq. ft., concrete, poor condition, off-site use only

Bldgs. 00576, 00577
Moffett Field
Santa Clara CA 94035
Landholding Agency: Army
Property Number: 21200710056
Status: Unutilized
Comments: 1968/2400 sq. ft., most recent use—youth shelter, possible asbestos, off-site use only

Bldgs. 08420, 08460, 08480
Moffett Field
Santa Clara CA 94035
Landholding Agency: Army
Property Number: 21200710102
Status: Unutilized
Comments: 8710 sq. ft., possible asbestos/lead paint, most recent use—6 family dwelling unit, offsite use only

**Suitable/Available Properties**

*Building*

California

Bldgs. 5, 6, 7
Bell AFRC
Bell CA 90201
Landholding Agency: Army
Property Number: 21200740050
Status: Unutilized
Comments: 198,000 sq. ft., warehouses, presence of asbestos/lead paint, need major repairs, offsite use only

Colorado

Bldgs. 25, 26, 27
Pueblo Chemical Depot
Pueblo CO 81006
Landholding Agency: Army
Property Number: 21200420178
Status: Unutilized
Comments: 1311 sq. ft., presence of asbestos/lead paint, most recent use—housing, off-site use only

Bldg. 00127
Pueblo Chemical Depot
Pueblo CO 81006
Landholding Agency: Army
Property Number: 21200420179
Status: Unutilized
Comments: 8067 sq. ft., presence of asbestos, most recent use—barracks, off-site use only

**Suitable/Available Properties**

*Building*

Colorado

Bldg. 01516
Fort Carson
El Paso CO 80913
Landholding Agency: Army
Property Number: 21200640116
Status: Unutilized
Comments: 723 sq. ft., needs repair, most recent use—storage, off-site use only

Georgia

Bldg. 322
Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 21199720156
Status: Unutilized
Comments: 9600 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. 2593
Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 21199720167
Status: Unutilized
Comments: 13644 sq. ft., needs rehab, most recent use—parachute shop, off-site use only

Bldg. 2595
Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 21199720168
Status: Unutilized
Comments: 3356 sq. ft., needs rehab, most recent use—chapel, off-site use only

**Suitable/Available Properties**

*Building*

Georgia

Bldg. 4232
Fort Benning
null Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 21199830291
Status: Unutilized
Comments: 3720 sq. ft., needs rehab, most recent use—maint. bay, off-site use only

Bldgs. 5974–5978
Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 21199930135
Status: Unutilized
Comments: 400 sq. ft., most recent use—storage, off-site use only

Bldg. 5993
Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 21199930136
Status: Unutilized
Comments: 960 sq. ft., most recent use—storage, off-site use only

Bldg. 5994
Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 21199930137
Status: Unutilized
Comments: 2016 sq. ft., most recent use—storage, off-site use only

**Suitable/Available Properties**

*Building*

Georgia

Bldg. T–1003
Fort Stewart
Hinesville Co: Liberty GA 31514
Landholding Agency: Army
Property Number: 21200030085
Status: Excess
Comments: 9267 sq. ft., poor condition, most recent use—admin., off-site use only

Bldg. T–0130
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Landholding Agency: Army
Property Number: 21200230041
Status: Excess
Comments: 10,813 sq. ft., off-site use only

Bldg. T0157
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Landholding Agency: Army
Property Number: 21200230042

Status: Excess
Comments: 1440 sq. ft., off-site use only

Bldgs. T291, T292
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Landholding Agency: Army
Property Number: 21200230044
Status: Excess
Comments: 5220 sq. ft. each, off-site use only

**Suitable/Available Properties**

*Building*

Georgia

Bldg. T0295
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Landholding Agency: Army
Property Number: 21200230045
Status: Excess
Comments: 5220 sq. ft., off-site use only

Bldg. 4476
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Landholding Agency: Army
Property Number: 21200420034
Status: Excess
Comments: 3148 sq. ft., most recent use—veh. maint. shop, off-site use only

Bldg. 9029
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Landholding Agency: Army
Property Number: 21200420050
Status: Excess
Comments: 7356 sq. ft., most recent use—heat plant bldg., off-site use only

Bldg. T924
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420194
Status: Excess
Comments: 9360 sq. ft., most recent use—warehouse, off-site use only

**Suitable/Available Properties**

*Building*

Georgia

Bldg. 00924
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200510065
Status: Excess
Comments: 9360 sq. ft., most recent use—warehouse, off-site use only

Bldg. 08585
Hunter Army Airfield
Savannah Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 21200530078
Status: Excess
Comments: 165 sq. ft., most recent use—plant, off-site use only

Bldg. 01150
Hunter Army Airfield
Savannah Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 21200610037
Status: Excess
Comments: 137 sq. ft., most recent use—flam mat storage, off-site use only

Bldg. 01151
Hunter Army Airfield
Savannah Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 21200610038
Status: Excess
Comments: 78 sq. ft., most recent use—flam mat storage, off-site use only

**Suitable/Available Properties**

*Building*

Georgia

Bldg. 01153
Hunter Army Airfield
Savannah Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 21200610039
Status: Excess
Comments: 211 sq. ft., most recent use—flam mat storage, off-site use only

Bldg. 01530
Fort Stewart
Liberty GA 31314
Landholding Agency: Army
Property Number: 21200610048
Status: Excess
Comments: 80 sq. ft., most recent use—scale house, off-site use only

Bldg. 08032
Fort Stewart
Liberty GA 31314
Landholding Agency: Army
Property Number: 21200610051
Status: Excess
Comments: 2592 sq. ft., needs rehab, most recent use—storage/stable, off-site use only

Bldg. 07783
Fort Stewart
Hinesville GA 31314
Landholding Agency: Army
Property Number: 21200640093
Status: Excess
Comments: 8640 sq. ft., most recent use—maintenance hangar, off-site use only

**Suitable/Available Properties**

*Building*

Georgia

Bldg. 08061
Fort Stewart
Hinesville GA 31314
Landholding Agency: Army
Property Number: 21200640094
Status: Excess
Comments: 1296 sq. ft., most recent use—weather station, off-site use only

Bldg. 00100
Hunter Army Airfield
Chatham GA 31409
Landholding Agency: Army
Property Number: 21200740052
Status: Excess
Comments: 10893 sq. ft., most recent use—battalion hdqts., off-site use only

Bldg. 00129
Hunter Army Airfield
Chatham GA 31409
Landholding Agency: Army
Property Number: 21200740053
Status: Excess
Comments: 4815 sq. ft., presence of asbestos, most recent use—religious education facility, off-site use only

Bldg. 00145
Hunter Army Airfield
Chatham GA 31409
Landholding Agency: Army
Property Number: 21200740054
Status: Excess
Comments: 11590 sq. ft., presence of asbestos, most recent use—post chapel, off-site use only

**Suitable/Available Properties**

*Building*

Georgia

Bldg. 00811
Hunter Army Airfield
Chatham GA 31409
Landholding Agency: Army
Property Number: 21200740055
Status: Excess
Comments: 42853 sq. ft., most recent use—co hq bldg, off-site use only

Bldg. 00812
Hunter Army Airfield
Chatham GA 31409
Landholding Agency: Army
Property Number: 21200740056
Status: Excess
Comments: 1080 sq. ft., most recent use—power plant, off-site use only

Bldg. 00850
Hunter Army Airfield
Chatham GA 31409
Landholding Agency: Army
Property Number: 21200740057
Status: Excess
Comments: 108,287 sq. ft., presence of asbestos, most recent use—aircraft hangar, off-site use only

Bldg. 00860
Hunter Army Airfield
Chatham GA 31409
Landholding Agency: Army
Property Number: 21200740058
Status: Excess
Comments: 10679 sq. ft., presence of asbestos, most recent use—maint. hangar, off-site use only

**Suitable/Available Properties**

*Building*

Georgia

Bldg. 01028
Hunter Army Airfield
Chatham GA 31409
Landholding Agency: Army
Property Number: 21200740059
Status: Excess
Comments: 870 sq ft., most recent use—storage, off-site use only

Bldg. 00955
Fort Stewart
Hinesville GA 31314
Landholding Agency: Army
Property Number: 21200740060
Status: Excess
Comments: 120 sq. ft., most recent use—storage, off-site use only

Bldg. 00957
Fort Stewart
Hinesville GA 31314
Landholding Agency: Army
Property Number: 21200740061
Status: Excess
Comments: 6072 sq. ft., most recent use—recycling facility, off-site use only

Bldg. 00971
Fort Stewart
Hinesville GA 31314
Landholding Agency: Army
Property Number: 21200740062
Status: Excess
Comments: 4000 sq. ft., most recent use—vehicle maint., off-site use only

**Suitable/Available Properties**

*Building*

Georgia

Bldg. 01015
Fort Stewart
Hinesville GA 31314
Landholding Agency: Army
Property Number: 21200740063
Status: Excess
Comments: 7496 sq. ft., most recent use—storage, off-site use only

Bldg. 01209
Fort Stewart
Hinesville GA 31314
Landholding Agency: Army
Property Number: 21200740064
Status: Excess
Comments: 4786 sq. ft., presence of asbestos, most recent use—vehicle maint., off-site use only

Bldg. 07335
Fort Stewart
Hinesville GA 31314
Landholding Agency: Army
Property Number: 21200740065
Status: Excess
Comments: 4400 sq. ft., most recent use—chapel, off-site use only

Bldg. 245
Fort Benning
Ft. Benning GA 31905
Landholding Agency: Army
Property Number: 21200740178
Status: Unutilized
Comments: 1102 sq. ft., most recent use—fld ops, off-site use only

**Suitable/Available Properties**

*Building*

Georgia

Bldg. 2748
Fort Benning
Ft. Benning GA 31905
Landholding Agency: Army
Property Number: 21200740180
Status: Unutilized
Comments: 3990 sq. ft., most recent use—office, off-site use only

Bldg. 3866
Fort Benning
Ft. Benning GA 31905
Landholding Agency: Army
Property Number: 21200740182
Status: Unutilized
Comments: 944 sq. ft., most recent use—office, off-site use only

Bldg. 8682
Fort Benning
Ft. Benning GA 31905
Landholding Agency: Army
Property Number: 21200740183
Status: Unutilized
Comments: 780 sq. ft., most recent use—admin., off-site use only

Bldg. 10800
Fort Benning
Ft. Benning GA 31905
Landholding Agency: Army
Property Number: 21200740184
Status: Unutilized
Comments: 16,628 sq. ft., off-site use only

**Suitable/Available Properties**

*Building*

Georgia

Bldgs. 11302, 11303, 11304
Fort Benning
Ft. Benning GA 31905
Landholding Agency: Army
Property Number: 21200740185
Status: Unutilized
Comments: various sq. ft., most recent use—ACS center, off-site use only

Bldg. 0297
Ft. Benning
Chattahoochie GA 31905
Landholding Agency: Army
Property Number: 21200810045
Status: Excess
Comments: 4839 sq. ft., most recent use—riding stable, off-site use only

Bldg. 3819
Ft. Benning
Chattahoochie GA 31905
Landholding Agency: Army
Property Number: 21200810046
Status: Excess
Comments: 4241 sq. ft., most recent use—training, off-site use only

Bldg. 10802
Ft. Benning
Chattahoochie GA 31905
Landholding Agency: Army
Property Number: 21200810047
Status: Excess
Comments: 3182 sq. ft., most recent use—storage, off-site use only

**Suitable/Available Properties**

*Building*

Hawaii

P–88
Aliamanu Military Reservation
Honolulu Co: Honolulu HI 96818
Landholding Agency: Army
Property Number: 21199030324
Status: Unutilized
Directions: Approximately 600 feet from Main Gate on Aliamanu Drive.
Comments: 45,216 sq. ft. underground tunnel complex, pres. of asbestos clean-up required of contamination, use of respirator required by those entering property, use limitations

Illinois

Bldg. 54
Rock Island Arsenal
Rock Island Co: Rock Island IL 61299
Landholding Agency: Army
Property Number: 21199620666
Status: Unutilized
Comments: 2000 sq. ft., most recent use—oil storage, needs repair, off-site use only

Bldg. AR112
Sheridan Reserve
Arlington Heights IL 60052–2475
Landholding Agency: Army
Property Number: 21200110081
Status: Unutilized
Comments: 1000 sq. ft., off-site use only

**Suitable/Available Properties**

*Building*

Illinois

Bldgs. 634, 639
Fort Sheridan
Ft. Sheridan IL 60037
Landholding Agency: Army
Property Number: 21200740186
Status: Unutilized
Comments: 3731/3706 sq. ft., most recent use—classroom/storage, off-site use only

Iowa

Bldg. 00691
Iowa Army Ammo Plant
Middletown Co: Des Moines IA 52638
Landholding Agency: Army
Property Number: 21200510073
Status: Unutilized
Comments: 2581 sq. ft. residence, presence of lead paint, possible asbestos

Bldg. 00691
Iowa Army Ammo Plant
Middletown Co: Des Moines IA 52638
Landholding Agency: Army
Property Number: 21200520113
Status: Unutilized
Comments: 2581 sq. ft., presence of asbestos/lead paint, most recent use—residential

**Suitable/Available Properties**

*Building*

Kentucky

Bldgs. 02660, 03706
Fort Campbell
Christian KY 42223
Landholding Agency: Army
Property Number: 21200830003
Status: Underutilized
Comments: 4000 sq. ft. each, off-site use only

Louisiana

Bldg. 8423, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459
Landholding Agency: Army
Property Number: 21199640528
Status: Underutilized
Comments: 4172 sq. ft., most recent use—barracks

Bldg. T7125
Fort Polk
Ft. Polk LA 71459
Landholding Agency: Army
Property Number: 21200540088
Status: Unutilized
Comments: 1875 sq. ft., off-site use only

Bldgs. T7163, T8043
Fort Polk
Ft. Polk LA 71459
Landholding Agency: Army
Property Number: 21200540089
Status: Unutilized
Comments: 4073/1923 sq. ft., off-site use only

**Suitable/Available Properties**

*Building*

Maryland

Bldg. 0459B
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army

Property Number: 21200120106
Status: Unutilized
Comments: 225 sq. ft., poor condition, most recent use—equipment bldg., off-site use only

Bldg. 00785
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120107
Status: Unutilized
Comments: 160 sq. ft., poor condition, most recent use—shelter, off-site use only

Bldg. E5239
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120113
Status: Unutilized
Comments: 230 sq. ft., most recent use—storage, off-site use only

Bldg. E5317
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120114
Status: Unutilized
Comments: 3158 sq. ft., presence of asbestos/lead paint, most recent use—lab, off-site use only

**Suitable/Available Properties**

*Building*

Maryland

Bldg. E5637
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120115
Status: Unutilized
Comments: 312 sq. ft., presence of asbestos/lead paint, most recent use—lab, off-site use only

Bldg. 219
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755
Landholding Agency: Army
Property Number: 21200140078
Status: Unutilized
Comments: 8142 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 294
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755
Landholding Agency: Army
Property Number: 21200140081
Status: Unutilized
Comments: 3148 sq. ft., presence of asbestos/lead paint, most recent use—entomology facility, offsite use only

**Suitable/Available Properties**

*Building*

Maryland

Bldg. 1007
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755
Landholding Agency: Army
Property Number: 21200140085
Status: Unutilized
Comments: 3108 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 2214
Fort George G. Meade
Fort Meade Co: Anne Arundel MD 20755
Landholding Agency: Army
Property Number: 21200230054
Status: Unutilized
Comments: 7740 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—storage, offsite use only

Bldg. 00375
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200320107
Status: Unutilized
Comments: 64 sq. ft., most recent use—storage, off-site use only

**Suitable/Available Properties**

*Building*

Maryland

Bldg. 0385A
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200320110
Status: Unutilized
Comments: 944 sq. ft., off-site use only

Bldg. 00523
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200320113
Status: Unutilized
Comments: 3897 sq. ft., most recent use—paint shop, off-site use only

Bldg. 0700B
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200320121
Status: Unutilized
Comments: 505 sq. ft., off-site use only

Bldg. 01113
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200320128
Status: Unutilized
Comments: 1012 sq. ft., off-site use only

**Suitable/Available Properties**

*Building*

Maryland

Bldgs. 01124, 01132
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200320129
Status: Unutilized
Comments: 740/2448 sq. ft., most recent use—lab, off-site use only

Bldg. 03558
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200320133
Status: Unutilized
Comments: 18,000 sq. ft., most recent use—storage, off-site use only

Bldg. 05262
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200320136
Status: Unutilized
Comments: 864 sq. ft., most recent use—storage, off-site use only

Bldg. 05608
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200320137
Status: Unutilized
Comments: 1100 sq. ft., most recent use—maint bldg., off-site use only

**Suitable/Available Properties**

*Building*

Maryland

Bldg. E5645
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200320150
Status: Unutilized
Comments: 548 sq. ft., most recent use—storage, off-site use only

Bldg. 00435
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330111
Status: Unutilized
Comments: 1191 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 0449A
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330112
Status: Unutilized
Comments: 143 sq. ft., needs rehab, most recent use—substation switch bldg., off-site use only

Bldg. 0460
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330114
Status: Unutilized
Comments: 1800 sq. ft., needs rehab, most recent use—electrical EQ bldg., off-site use only

**Suitable/Available Properties**

*Building*

Maryland

Bldg. 00914
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330118
Status: Unutilized
Comments: needs rehab, most recent use—safety shelter, off-site use only

Bldg. 00915
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330119
Status: Unutilized
Comments: 247 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 01189
Aberdeen Proving Grounds

Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330126
Status: Unutilized
Comments: 800 sq. ft., needs rehab, most recent use—range bldg., off-site use only

Bldg. E1413
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330127
Status: Unutilized
Comments: needs rehab, most recent use—observation tower, off-site use only

**Suitable/Available Properties**

*Building*

Maryland

Bldg. E3175
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330134
Status: Unutilized
Comments: 1296 sq. ft., needs rehab, most recent use—hazard bldg., off-site use only

4 Bldgs.
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330135
Status: Unutilized
Directions: E3224, E3228, E3230, E3232, E3234
Comments: sq. ft. varies, needs rehab, most recent use—lab test bldgs., off-site use only

Bldg. E3241
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330136
Status: Unutilized
Comments: 592 sq. ft., needs rehab, most recent use—medical res bldg., off-site use only

**Suitable/Available Properties**

*Building*

Maryland

Bldg. E3300
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330139
Status: Unutilized
Comments: 44,352 sq. ft., needs rehab, most recent use—chemistry lab, off-site use only

Bldg. E3335
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330144
Status: Unutilized
Comments: 400 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldgs. E3360, E3362, E3464
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330145
Status: Unutilized
Comments: 3588/236 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E3542
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330148
Status: Unutilized
Comments: 1146 sq. ft., needs rehab, most recent use—lab test bldg., off-site use only

**Suitable/Available Properties**

*Building*

Maryland

Bldg. E4420
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330151
Status: Unutilized
Comments: 14,997 sq. ft., needs rehab, most recent use—police bldg., off-site use only

4 Bldgs.
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330154
Status: Unutilized
Directions: E5005, E5049, E5050, E5051
Comments: sq. ft. varies, needs rehab, most recent use—storage, off-site use only

Bldg. E5068
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330155
Status: Unutilized
Comments: 1200 sq. ft., needs rehab, most recent use—fire station, off-site use only

**Suitable/Available Properties**

*Building*

Maryland

Bldgs. 05448, 05449
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330161
Status: Unutilized
Comments: 6431 sq. ft., needs rehab, most recent use—enlisted UHP, off-site use only

Bldg. 05450
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330162
Status: Unutilized
Comments: 2730 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldgs. 05451, 05455
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330163
Status: Unutilized
Comments: 2730/6431 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 05453
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330164
Status: Unutilized
Comments: 6431 sq. ft., needs rehab, most recent use—admin., off-site use only

**Suitable/Available Properties**

*Builbing*

Maryland

Bldg. E5609
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330167
Status: Unutilized
Comments: 2053 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E5611
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330168
Status: Unutilized
Comments: 11,242 sq. ft., needs rehab, most recent use—hazard bldg., off-site use only

Bldg. E5634
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330169
Status: Unutilized
Comments: 200 sq. ft., needs rehab, most recent use—flammable storage, off-site use only

Bldg. E5654
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330171
Status: Unutilized
Comments: 21,532 sq. ft., needs rehab, most recent use—storage, off-site use only

**Suitable/Available Properties**

*Building*

Maryland

Bldgs. E5942
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330176
Status: Unutilized
Comments: 2147 sq. ft., needs rehab, most recent use—igloo storage, off-site use only

Bldgs. E5952, E5953
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330177
Status: Unutilized
Comments: 100/24 sq. ft., needs rehab, most recent use—compressed air bldg., off-site use only

Bldgs. E7401, E7402
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330178
Status: Unutilized
Comments: 256/440 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E7407, E7408
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330179
Status: Unutilized
Comments: 1078/762 sq. ft., needs rehab, most recent use—decon facility, off-site use only

**Suitable/Available Properties**

*Building*

Maryland

Bldgs.3070A
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200420055
Status: Unutilized
Comments: 2299 sq. ft., most recent use—heat plant, off-site use only

Bldg. E5026
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200420056
Status: Unutilized
Comments: 20,536 sq. ft., most recent use—storage, off-site use only

Bldg. 05261
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200420057
Status: Unutilized
Comments: 10067 sq. ft., most recent use—maintenance, off-site use only

Bldg. E5876
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200440073
Status: Unutilized
Comments: 1192 sq. ft., needs rehab, most recent use—storage, off-site use only

**Suitable/Available Properties**

*Building*

Maryland

Bldg. 00688
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200530080
Status: Unutilized
Comments: 24,192 sq. ft., most recent use—ammo, off-site use only

Bldg. 04925
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200540091
Status: Unutilized
Comments: 1326 sq. ft., off-site use only

Bldg. 00255
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200720052
Status: Unutilized
Comments: 64 sq. ft., most recent use—storage, off-site use only

Bldg. 00638
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200720053
Status: Unutilized
Comments: 4295 sq. ft., most recent use—storage, off-site use only

**Suitable/Available Properties**

*Building*

Maryland

Bldg. 00721
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200720054
Status: Unutilized
Comments: 135 sq. ft., most recent use—storage, off-site use only

Bldgs. 00936, 00937
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200720055
Status: Unutilized
Comments: 2000 sq. ft., most recent use—storage, off-site use only

Bldgs. E1410, E1434
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200720056
Status: Unutilized
Comments: 2276/3106 sq. ft., most recent use—laboratory, off-site use only

Bldg. 03240
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200720057
Status: Unutilized
Comments: 10,049 sq. ft., most recent use—office, off-site use only

**Suitable/Available Properties**

*Building*

Maryland

Bldg. E3834
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200720058
Status: Unutilized
Comments: 72 sq. ft., most recent use—office, off-site use only

Bldgs. E4465, E4470, E4480
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200720059
Status: Unutilized
Comments: 17658/16876/17655 sq. ft., most recent use—office, off-site use only

Bldgs. E5137, 05219
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200720060
Status: Unutilized
Comments: 3700/8175 sq. ft., most recent use—office, off-site use only

Bldg. E5236
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200720061
Status: Unutilized
Comments: 10,325 sq. ft., most recent use—storage, off-site use only

**Suitable/Available Properties**

*Building*

Maryland

Bldg. E5282
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200720062
Status: Unutilized
Comments: 4820 sq. ft., most recent use—hazard bldg., off-site use only

Bldgs. E5736, E5846, E5926
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200720063
Status: Unutilized
Comments: 1069/4171/11279 sq. ft., most recent use—storage, off-site use only

Bldg. E6890
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200720064
Status: Unutilized
Comments: 1 sq. ft., most recent use—impact area, off-site use only

Bldg. 00310
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200820077
Status: Unutilized
Comments: 56516 sq. ft., most recent use—admin., off-site use only

**Suitable/Available Properties**

*Building*

Maryland

Bldg. 00315
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820078
Status: Unutilized
Comments: 74396 sq. ft., most recent use—mach shop, off-site use only

Bldg. 00338
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820079
Status: Unutilized
Comments: 45443 sq. ft., most recent use—gnd tran eqp, off-site use only

Bldg. 00360
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820080
Status: Unutilized
Comments: 15287 sq. ft., most recent use—general inst., off-site use only

Bldg. 00445
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820081
Status: Unutilized
Comments: 6367 sq. ft., most recent use—lab, off-site use only

**Suitable/Available Properties**

*Building*

Maryland

Bldg. 00851
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820082
Status: Unutilized
Comments: 694 sq. ft., most recent use—range bldg., off-site use only

E1043
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820083
Status: Unutilized
Comments: 5200 sq. ft., most recent use—lab, off-site use only

Bldg. 01089
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820084
Status: Unutilized
Comments: 12369 sq. ft., most recent use—veh maint, off-site use only

Bldg. 01091
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820085
Status: Unutilized
Comments: 2201 sq. ft., most recent use—storage, off-site use only

**Suitable/Available Properties**

*Building*

Maryland

Bldg. E1386
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820086
Status: Unutilized
Comments: 251 sq. ft., most recent use—eng/mnt, off-site use only

5 Bldgs.
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820087
Status: Unutilized
Directions: E1440, E1441, E1443, E1445, E1455
Comments: 112 sq. ft., most recent use—safety shelter, off-site use only

Bldgs. E1467, E1485
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820088
Status: Unutilized
Comments: 160/800 sq. ft., most recent use—storage, off-site use only

**Suitable/Available Properties**

*Building*

Maryland

Bldg. E1521
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820090
Status: Unutilized
Comments: 1200 sq. ft., most recent use—overhead protection, off-site use only

Bldg. E1570
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820091
Status: Unutilized
Comments: 47027 sq. ft., most recent use—office, off-site use only

Bldg. E1572
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820092
Status: Unutilized
Comments: 1402 sq. ft., most recent use—maint., off-site use only

**Suitable/Available Properties**

*Building*

Maryland

4 Bldgs.
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820093
Status: Unutilized
Directions: E1645, E1675, E1677, E1930
Comments: various sq. ft., most recent use—office, off-site use only

Bldgs. E2160, E2184, E2196
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820094
Status: Unutilized
Comments: 12440/13816 sq. ft., most recent use—storage, off-site use only

Bldg. E2174
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820095
Status: Unutilized
Comments: 132 sq. ft., off-site use only

**Suitable/Available Properties**

*Building*

Maryland

Bldgs. 02208, 02209
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820096
Status: Unutilized
Comments: 11566/18085 sq. ft., most recent use—lodging, off-site use only

Bldg. 02353
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820097
Status: Unutilized
Comments: 19252 sq. ft., most recent use—veh maint, off-site use only

Bldgs. 02482, 02484
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820098
Status: Unutilized
Comments: 8359 sq. ft., most recent use—gen purp, off-site use only

Bldg. 02483
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820099
Status: Unutilized
Comments: 1360 sq. ft., most recent use—heat plt, off-site use only

**Suitable/Available Properties**

*Building*

Maryland

Bldgs. 02504, 02505
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820100
Status: Unutilized
Comments: 11720/17434 sq. ft., most recent use—lodging, off-site use only

Bldgs. 02831, E3488
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820101
Status: Unutilized
Comments: 576/64 sq. ft., most recent use—access cnt fac, off-site use only

Bldg. 2831A
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820102
Status: Unutilized
Comments: 1200 sq. ft., most recent use—overhead protection, off-site use only

Bldg. 03320
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820103
Status: Unutilized
Comments: 10,600 sq. ft., most recent use—admin, off-site use only

**Suitable/Available Properties**

*Building*

Maryland

Bldg. E3466
Aberdeen Proving Ground
Aberdeen MD
Landholding Agency: Army
Property Number: 21200820104
Status: Unutilized
Comments: 236 sq. ft., most recent use—protective barrier, off-site use only

4 Bldgs.
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820105
Status: Unutilized
Directions: E3510, E3570, E3640, E3832
Comments: various sq. ft., most recent use—lab, off-site use only

Bldg. E3544
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army

Property Number: 21200820106
Status: Unutilized
Comments: 5400 sq. ft., most recent use—ind waste, off-site use only

**Suitable/Available Properties**

*Building*

Maryland

Bldgs. E3561, 03751
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820107
Status: Unutilized
Comments: 64/189 sq. ft., most recent use—access cnt fac, off-site use only

Bldg. 03754
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820108
Status: Unutilized
Comments: 324 sq. ft., most recent use—classroom, off-site use only

Bldg. 3823A
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820109
Status: Unutilized
Comments: 113 sq. ft., most recent use—shed, off-site use only

Bldg. E3948
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820110
Status: Unutilized
Comments: 3420 sq. ft., most recent use—emp chg fac, off-site use only

**Suitable/Available Properties**

*Building*

Maryland

4 Bldgs.
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820111
Status: Unutilized
Directions: E5057, E5058, E5246, 05258
Comments: various sq. ft., most recent use—storage, off-site use only

Bldgs. E5106, 05256
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820112
Status: Unutilized
Comments: 18,621/8720 sq. ft., most recent use—office, off-site use only

Bldg. E5126
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820113
Status: Unutilized
Comments: 17,664 sq. ft., most recent use—heat plt, off-site use only

**Suitable/Available Properties**

*Building*

Maryland

Bldg. E5128
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820114
Status: Unutilized
Comments: 3750 sq. ft., most recent use—substation, off-site use only

Bldg. E5188
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820115
Status: Unutilized
Comments: 22,790 sq. ft., most recent use—lab, off-site use only

Bldg. E5179
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820116
Status: Unutilized
Comments: 47,335 sq. ft., most recent use—info sys, off-site use only

Bldg. E5190
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820117
Status: Unutilized
Comments: 874 sq. ft., most recent use—storage, off-site use only

**Suitable/Available Properties**

*Building*

Maryland

Bldg. 05223
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820118
Status: Unutilized
Comments: 6854 sq. ft., most recent use—gen rep inst, off-site use only

Bldgs. 05259, 05260
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820119
Status: Unutilized
Comments: 10,067 sq. ft., most recent use—maint, off-site use only

Bldgs. 05263, 05264
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820120
Status: Unutilized
Comments: 200 sq. ft., most recent use—org space, off-site use only

**Suitable/Available Properties**

*Building*

Maryland

5 Bldgs.
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820121
Status: Unutilized
Directions: 05267, E5294, E5327, E5441, E5485
Comments: various sq. ft., most recent use—storage, off-site use only

Bldg. E5292
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820122
Status: Unutilized
Comments: 1166 sq. ft., most recent use—comp rep inst, off-site use only

Bldg. E5380
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820123
Status: Unutilized
Comments: 9176 sq. ft., most recent use—lab, off-site use only

**Suitable/Available Properties**

*Building*

Maryland

Bldg. E5452
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820124
Status: Unutilized
Comments: 9623 sq. ft., off-site use only

Bldg. 05654
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820125
Status: Unutilized
Comments: 38 sq. ft. most recent use—shed, off-site use only

Bldg. 05656
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820126
Status: Unutilized
Comments: 2240 sq. ft., most recent use—overhead protection off-site use only

**Suitable/Available Properties**

*Building*

Maryland

5 Bldgs.
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820127
Status: Unutilized
Directions: E5730, E5738, E5915, E5928, E6875
Comments: various sq. ft., most recent use—storage, off-site use only

Bldg. E5770
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820128
Status: Unutilized
Comments: 174 sq. ft., most recent use—cent wash, off-site use only

Bldg. E5840
Aberdeen Proving Ground
Harford MD

Landholding Agency: Army
Property Number: 21200820129
Status: Unutilized
Comments: 14,200 sq. ft., most recent use—lab, off-site use only

**Suitable/Available Properties**

*Building*

Maryland

Bldg. E5946
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820130
Status: Unutilized
Comments: 2147 sq. ft., most recent use—igloo str, off-site use only

Bldg. E6872
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820131
Status: Unutilized
Comments: 1380 sq. ft., most recent use—dispatch, off-site use only

Bldgs. E7331, E7332, E7333
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820132
Status: Unutilized
Comments: Most recent use—protective barrier, off-site use only

Bldg. E7821
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820133
Status: Unutilized
Comments: 3500 sq. ft., most recent use—xmitter bldg, off-site use only

**Suitable/Available Properties**

*Building*

Missouri

Bldg. T1497
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199420441
Status: Underutilized
Comments: 4720 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T2139
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199420446
Status: Underutilized
Comments: 3663 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T2385
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473
Landholding Agency: Army
Property Number: 21199510115
Status: Excess
Comments: 3158 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only

**Suitable/Available Properties**

*Building*

Missouri

Bldg. 2167
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820179
Status: Unutilized
Comments: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldgs. 2192, 2196, 2198
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820183
Status: Unutilized
Comments: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only

12 Bldgs
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200410110
Status: Unutilized
Directions: 07036, 07050, 07054, 07102, 07400, 07401, 08245, 08249, 08251, 08255, 08257, 08261.
Comments: 7152 sq. ft. 6 plex housing quarters, potential contaminants, off-site use only

**Suitable/Available Properties**

*Building*

Missouri

6 Bldg
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200410111
Status: Unutilized
Directions: 07044, 07106, 07107, 08260, 08281, 08300
Comments: 9520 sq ft., 8 plex housing quarters, potential contaminants, off-site use only

15 Bldgs
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200410112
Status: Unutilized
Directions: 08242, 08243, 08246–08248, 08250, 08252–08254, 08256, 08258–08259, 08262–08263, 08265
Comments: 4784 sq ft., 4 plex housing quarters, potential contaminants, off-site use only

Bldgs 08283, 08285
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200410113
Status: Unutilized
Comments: 2240 sq ft, 2 plex housing quarters, potential contaminants, off-site use only

**Suitable/Available Properties**

*Building*

Missouri

15 Bldgs
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–0827
Landholding Agency: Army
Property Number: 21200410114
Status: Unutilized
Directions: 08267, 08269, 08271, 08273, 08275, 08277, 08279, 08290, 08296, 08301
Comments: 4784 sq ft., 4 plex housing quarters, potential contaminants, off-site use only

Bldg 09432
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200410115
Status: Unutilized
Comments: 8724 sq ft., 6-plex housing quarters, potential contaminants, off-site use only

Bldgs. 5006 and 5013
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number 21200430064
Status: Unutilized
Comments: 192 sq. ft., needs repair, most recent use—generator bldg., off-site use only

**Suitable/Available Properties**

*Building*

Missouri

Bldgs. 13210, 13710
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number 21200430065
Status: Unutilized
Comments: 144 sq. ft. each, needs repair, most recent use—communication, off-site use only

Montana

Bldg. 00405
Fort Harrison
Ft. Harrison Co: Lewis/Clark MT 59636
Landholding Agency: Army
Property Number 21200130099
Status: Unutilized
Comments: 3467 sq. ft., most recent use—storage, security limitations

Bldg. T0066
Fort Harrison
Ft. Harrison Co: Lewis/Clark MT 59636
Landholding Agency: Army
Property Number 21200130100
Status: Unutilized
Comments: 528 sq. ft., needs rehab, presence of asbestos, security limitations

Bldg. 00001
Sheridan Hall USARC
Helena MT 59601

Landholding Agency: Army
Property Number 21200540093
Status: Unutilized
Comments: 19,321 sq. ft., most recent use—Reserve Center

**Suitable/Available Properties**

*Building*

Montana

Bldg. 00003
Sheridan Hall USARC
Helena MT 59601
Landholding Agency: Army
Property Number 21200540094
Status: Unutilized
Comments: 1950 sq. ft., most recent use—maintenance/storage

New Jersey

Bldg. 732
Armament R Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number 21199740315
Status: Unutilized
Comments: 9077 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 816C
Armament R, D, Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number 21200130103
Status: Unutilized
Comments: 144 sq. ft., most recent use—storage, off-site use only

**Suitable/Available Properties**

*Building*

New Mexico

Bldg. 34198
White Sands Missile Range
Dona Ana NM 88002
Landholding Agency: Army
Property Number 21200230062
Status: Excess
Comments: 107 sq. ft., most recent use—security, off-site use only

New York

Bldg.1227
U.S. Military Academy
Highlands Co: Orange NY 10996–1592
Landholding Agency: Army
Property Number 21200440074
Status: Unutilized
Comments: 3800 sq. ft., needs repair, possible asbestos/lead paint, most recent use—maintenance, off-site use only

Bldg. 2218
Stewart Newburg USARC
New Windsor Co: Orange NY 12553–9000
Landholding Agency: Army
Property Number 21200510067
Status: Unutilized
Comments: 32,000 sq. ft., poor condition, requires major repairs, most recent use—storage/services

**Suitable/Available Properties**

*Building*

New York

7 Bldgs.
Stewart Newburg USARC
New Windsor Co: Orange NY 12553–9000
Landholding Agency: Army
Property Number 21200510068
Status: Unutilized
Directions 2122, 2124, 2126, 2128, 2106, 2108, 2104
Comments: sq. ft. varies, poor condition, needs major repairs, most recent use—storage/services

Oklahoma

Bldg. T–838, Fort Sill
838 Macomb Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number 21199220609
Status: Unutilized
Comments: 151 sq. ft., wood frame, 1 story, off-site removal only, most recent use—vet facility (quarantine stable).

Bldg. T–954, Fort Sill
954 Quinette Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199240659
Status: Unutilized
Comments: 3571 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—motor repair shop

**Suitable/Available Properties**

*Building*

Oklahoma

Bldg. T–3325, Fort Sill
3325 Naylor Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199240681
Status: Unutilized
Comments: 8832 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—warehouse

Bldg. T–4226
Fort Sill
Lawton Co: Comanche OK 73503
Landholding Agency: Army
Property Number: 21199440384
Status: Unutilized
Comments: 114 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—storage, off-site use only

Bldg. P–1015, Fort Sill
Lawton Co: Comanche OK 73501–5100
Landholding Agency: Army
Property Number: 21199520197
Status: Unutilized
Comments: 15,402 sq. ft., 1-story, most recent use—storage, off-site use only

Bldg. P–366, Fort Sill
Lawton Co: Comanche OK 73503
Landholding Agency: Army
Property Number: 21199610740
Status: Unutilized
Comments: 482 sq. ft., possible asbestos, most recent use—storage, off-site use only

**Suitable/Available Properties**

*Building*

Oklahoma

Building T–2952
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710047
Status: Unutilized
Comments: 4,327 sq. ft., possible asbestos and leadpaint, most recent use—motor repair shop, off-site use only

Building P–5042
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710066
Status: Unutilized
Comments: 119 sq. ft., possible asbestos and leadpaint, most recent use—heatplant, off-site use only

4 Buildings
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710086
Status: Unutilized
Directions:
T–6465, T–6466, T–6467, T–6468
Comments: Various sq. ft., possible asbestos and leadpaint, most recent use—range support, off site use only

**Suitable/Available Properties**

*Building*

Oklahoma

Bldg. T–810
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency:
Army
Property Number: 21199730350
Status: Unutilized
Comments: 7205 sq. ft., possible asbestos/lead paint, most recent use—hay storage, off-site use only

Bldgs. T–837, T–839
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730351
Status: Unutilized
Comments: Approx. 100 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. P–934
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730353
Status: Unutilized
Comments: 402 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

**Suitable/Available Properties**

*Building*

Oklahoma

Bldgs. T–1468, T–1469
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730357
Status: Unutilized
Comments: 114 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–1470
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730358

Status: Unutilized
Comments: 3120 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–1954, T–2022
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730362
Status: Unutilized
Comments: Approx. 100 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–2184
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730364
Status: Unutilized
Comments: 454 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

**Suitable/Available Properties**

*Building*

Oklahoma

Bldgs. T–2186, T–2188, T–2189
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730366
Status: Unutilized
Comments: 1656—3583 sq. ft., possible asbestos/lead paint, most recent use—vehicle maint. shop, off-site use only

Bldg. T–2187
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730367
Status: Unutilized
Comments: 1673 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–2291 thru T–2296
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730372
Status: Unutilized
Comments: 400 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only

**Suitable/Available Properties**

*Building*

Oklahoma

Bldgs. T–3001, T–3006
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730383
Status: Unutilized
Comments: Approx. 9300 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–3314
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730385
Status: Unutilized
Comments: 229 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. T–5041
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730409
Status: Unutilized
Comments: 763 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–5420
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730414
Status: Unutilized
Comments: 189 sq. ft., possible asbestos/lead paint, most recent use—fuel storage, off-site use only

**Suitable/Available Properties**

*Building*

Oklahoma

Bldg. T–7775
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730419
Status: Unutilized
Comments: 1452 sq. ft., possible asbestos/lead paint, most recent use—private club, off-site use only

4 Bldgs.
Fort Sill
P–617, P–1114, P–1386, P–1608
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910133
Status: Unutilized
Comments: 106 sq. ft., possible asbestos/lead paint, most recent use—utility plant, off-site use only

Bldg. P–746
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910135
Status: Unutilized
Comments: 6299 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

**Suitable/Available Properties**

*Building*

Oklahoma

Bldgs. P–2581, P–2773
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910140
Status: Unutilized
Comments: 4093 and 4129 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. P–2582
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910141
Status: Unutilized
Comments: 3672 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldgs. P–2912, P–2921, P–2944
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910144
Status: Unutilized
Comments: 1390 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. P–2914
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910146
Status: Unutilized
Comments: 1236 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

**Suitable/Available Properties**

*Building*

Oklahoma

Bldg. P–5101
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910153
Status: Unutilized
Comments: 82 sq. ft., possible asbestos/lead paint, most recent use—gas station, off-site use only

Bldg. S–6430
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910156
Status: Unutilized
Comments: 2080 sq. ft., possible asbestos/lead paint, most recent use—range support, off-site use only

Bldg. T–6461
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910157
Status: Unutilized
Comments: 200 sq. ft., possible asbestos/lead paint, most recent use—range support, off-site use only

**Suitable/Available Properties**

*Building*

Oklahoma

Bldg. T–6462
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910158
Status: Unutilized
Comments: 64 sq. ft., possible asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. P–7230
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910159
Status: Unutilized
Comments: 160 sq. ft., possible asbestos/lead paint, most recent use—transmitter bldg., off-site use only

Bldg. S–4023
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200010128
Status: Unutilized
Comments: 1200 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. P–747
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200120120
Status: Unutilized
Comments: 9232 sq. ft., possible asbestos/lead paint, most recent use—lab, off-site use only

**Suitable/Available Properties**

*Building*

Oklahoma

Bldg. P–842
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200120123
Status: Unutilized
Comments: 192 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–911
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200120124
Status: Unutilized
Comments: 3080 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. P–1672
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200120126
Status: Unutilized
Comments: 1056 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. S–2362
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200120127
Status: Unutilized
Comments: 64 sq. ft., possible asbestos/lead paint, most recent use—gatehouse, off-site use only

**Suitable/Available Properties**

*Building*

Oklahoma

Bldg. P–2589
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200120129
Status: Unutilized
Comments: 3672 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. 01276, 01278
Fort Sill
Lawton Co: Comanche OK 73501–5100
Landholding Agency: Army
Property Number: 21200520119
Status: Unutilized
Comments: 1533 sq. ft., most recent use—maintenance, off-site use only

Bldgs. 00937, 00957
Fort Sill
Lawton OK 73501
Landholding Agency: Army
Property Number: 21200710104
Status: Unutilized
Comments: 1558 sq. ft., most recent use—storage shed, off-site use only

Bldg. 01514
Fort Sill
Lawton OK 73501
Landholding Agency: Army
Property Number: 21200710105
Status: Unutilized
Comments: 1602 sq. ft., most recent use—storage, off-site use only

**Suitable/Available Properties**

*Building*

Oklahoma

Bldg. 05685
Fort Sill
Lawton OK 73501
Landholding Agency: Army
Property Number: 21200820152
Status: Unutilized
Comments: 24,072 sq. ft., concrete block/w brick, off-site use only

Bldg. 02943
Fort Sill
Lawton OK 73501
Landholding Agency: Army
Property Number: 21200830004
Status: Unutilized
Comments: 4054 sq. ft., most recent use—admin., off-site use only

South Carolina

Bldg. 3605
Fort Jackson
Ft. Jackson Co: Richland SC 29207
Landholding Agency: Army
Property Number: 21199820188
Status: Unutilized
Comments: 711 sq. ft., needs repair, most recent use—storage

**Suitable/Available Properties**

*Building*

South Carolina

Bldg. 1765
Fort Jackson
Ft. Jackson Co: Richland SC 29207
Landholding Agency: Army
Property Number: 21200030109
Status: Unutilized
Comments: 1700 sq. ft., need repairs, presence of asbestos/lead paint, most recent use—training bldg., off-site use only

South Dakota

Bldg. 03001
Jonas H. Lien AFRC
Sioux Falls SD 57104
Landholding Agency: Army
Property Number: 21200740187
Status: Unutilized
Comments: 33,282 sq. ft., most recent use—training center

Bldg. 03003
Jonas H. Lien AFRC
Sioux Falls SD 57104
Landholding Agency: Army
Property Number: 21200740188
Status: Unutilized
Comments: 4675 sq. ft., most recent use—vehicle maint. shop

**Suitable/Available Properties**

*Building*

Texas

Bldg. 7137, Fort Bliss
El Paso Co: El Paso TX 79916
Landholding Agency: Army
Property Number: 21199640564
Status: Unutilized
Comments: 35,736 sq. ft., 3-story, most recent use—housing, off-site use only

Bldg. 92043
Fort Hood
Ft. Hood Co: Bell TX 76544
Landholding Agency: Army
Property Number: 21200020206
Status: Unutilized
Comments: 450 sq. ft., most recent use—storage, off-site use only

Bldg. 92044
Fort Hood
Ft. Hood Co: Bell TX 76544
Landholding Agency: Army
Property Number: 21200020207
Status: Unutilized
Comments: 1920 sq. ft., most recent use—admin., off-site use only

Bldg. 92045
Fort Hood
Ft. Hood Co: Bell TX 76544
Landholding Agency: Army
Property Number: 21200020208
Status: Unutilized
Comments: 2108 sq. ft., most recent use—maint., off-site use only

**Suitable/Available Properties**

*Building*

Texas

Bldg. 56305
Fort Hood
Ft. Hood Co: Bell TX 76544
Landholding Agency: Army
Property Number: 21200220143
Status: Unutilized
Comments: 2160 sq. ft., most recent use—admin., off-site use only

Bldgs. 56620, 56621
Fort Hood
Ft. Hood Co: Bell TX 76544
Landholding Agency: Army
Property Number: 21200220146
Status: Unutilized
Comments: 1120 sq. ft., most recent use—shower, off-site use only

Bldgs. 56626, 56627
Fort Hood
Ft. Hood Co: Bell TX 76544
Landholding Agency: Army
Property Number: 21200220147
Status: Unutilized
Comments: 1120 sq. ft., most recent use—shower, off-site use only

Bldg. 56628
Fort Hood

Ft. Hood Co: Bell TX 76544
Landholding Agency: Army
Property Number: 21200220148
Status: Unutilized
Comments: 1133 sq. ft., most recent use—shower, off-site use only

**Suitable/Available Properties**

*Building*

Texas

Bldgs. 56636, 56637
Fort Hood
Ft. Hood Co: Bell TX 76544
Landholding Agency: Army
Property Number: 21200220150
Status: Unutilized
Comments: 1120 sq. ft., most recent use—shower, off-site use only

Bldg. 56638
Fort Hood
Ft. Hood Co: Bell TX 76544
Landholding Agency: Army
Property Number: 21200220151
Status: Unutilized
Comments: 1133 sq. ft., most recent use—shower, off-site use only

Bldgs. 56703, 56708
Fort Hood
Ft. Hood Co: Bell TX 76544
Landholding Agency: Army
Property Number: 21200220152
Status: Unutilized
Comments: 1306 sq. ft., most recent use—shower, off-site use only

Bldg: 56758
Fort Hood
Ft. Hood Co: Bell TX 76544
Landholding Agency: Army
Property Number: 21200220154
Status: Unutilized
Comments: 1133 sq. ft., most recent use-shower, off-site use only

**Suitable/Available Properties**

*Building*

Texas

Bldgs. P6220, P6222
Fort Sam Houston
Camp Bullis
San Antonio Co: Bexar TX
Landholding Agency: Army
Property Number: 21200330197
Status: Unutilized
Comments: 384 sq. ft., most recent use—carport/storage, off-site use only

Bldgs. P6224, P6226
Fort Sam Houston
Camp Bullis
San Antonio Co: Bexar TX
Landholding Agency: Army
Property Number: 21200330198
Status: Unutilized
Comments: 384 sq. ft., most recent use—carport/storage, off-site use only

Bldg: 92039
Fort Hood
Ft. Hood Co: Bell TX 76544
Landholding Agency: Army
Property Number: 21200640101
Status: Excess
Comments: 80 sq. ft., most recent use—storage, off-site use only

**Suitable/Available Properties**

*Building*

Texas

Bldgs. 04281, 04283
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200720085
Status: Excess
Comments: 4000/8020 sq. ft., most recent use—storage shed, off-site use only

Bldg: 04284
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200720086
Status: Excess
Comments: 800 sq. ft., presence of asbestos, most recent use—storage shed, off-site use only

Bldg: 04285
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200720087
Status: Excess
Comments: 8000 sq. ft., most recent use—storage shed, off-site use only

Bldg: 04286
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200720088
Status: Excess
Comments: 36,000 sq. ft., presence of asbestos, most recent use—storage shed, off-site use only

**Suitable/Available Properties**

*Building*

Texas

Bldg. 04291
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200720089
Status: Excess
Comments: 6400 sq. ft., presence of asbestos, most recent use—storage shed, off-site use only

Bldg. 4410
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200720090
Status: Excess
Comments: 12,956 sq. ft., presence of asbestos, most recent use—simulation center, off-site use only

Bldgs. 10031, 10032, 10033
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200720091
Status: Excess
Comments: 2578/3383 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldgs. 56524, 56532
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200720092
Status: Excess
Comments: 600 sq. ft., presence of asbestos, most recent use—dining, off-site use only

**Suitable/Available Properties**

*Building*

Texas

Bldg. 56435
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200720093
Status: Excess
Comments: 3441 sq. ft., presence of asbestos, most recent use—barracks, off-site use only

Bldg. 05708
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200720094
Status: Excess
Comments: 1344 sq. ft., most recent use—community center, off-site use only

Bldg. 90001
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200720095
Status: Excess
Comments: 3574 sq. ft., presence of asbestos, most recent use—transmitter bldg., off-site use only

Bldg. 93013
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200720099
Status: Excess
Comments: 800 sq. ft., most recent use—club, off-site use only

**Suitable/Available Properties**

*Building*

Texas

5 Bldgs.
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740195
Status: Excess
Directions: 56541, 56546, 56547, 56548, 56638
Comments: 1120/1133 sq. ft., presence of asbestos, most recent use—lavatory, off-site use only

4 Bldgs.
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200810048
Status: Unutilized
Directions: 00229, 00230, 00231, 00232
Comments: Various sq. ft., presence of asbestos, most recent use—training aids center, off-site use only

Bldg. 00324
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200810049
Status: Unutilized
Comments: 13,319 sq. ft., most recent use—roller skating rink, off-site use only

**Suitable/Available Properties**

*Building*

Texas

Bldgs. 00710, 00739, 00741
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200810050
Status: Unutilized
Comments: Various sq. ft., presence of asbestos, most recent use—repair shop, off-site use only

5 Bldgs.
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200810051
Status: Unutilized
Directions: 00711, 00712, 02219, 02612, 05780
Comments: Various sq. ft., presence of asbestos, most recent use—storage, off-site use only

Bldg. 00713
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200810052
Status: Unutilized
Comments: 3200 sq. ft., presence of asbestos, most recent use—hdqts. bldg., off-site use only

**Suitable/Available Properties**

*Building*

Texas

Bldgs. 1938, 04229
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200810053
Status: Unutilized
Comments: 2736/9000 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldgs. 02218, 02220
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200810054
Status: Unutilized
Comments: 7289/1456 sq. ft., presence of asbestos, most recent use—museum, off-site use only

Bldg. 0350
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200810055
Status: Unutilized
Comments: 28,290 sq. ft., presence of asbestos, most recent use—veh. maint. shop, off-site use only

Bldg. 04449
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200810056
Status: Unutilized
Comments: 3822 sq. ft., most recent use—police station, off-site use only

**Suitable/Available Properties**

*Building*

Texas

Bldg. 91077
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200810057
Status: Unutilized
Comments: 3200 sq. ft., presence of asbestos, most recent use—educational facility, off-site use only

Bldg. 1610
Fort Bliss
El Paso TX 79916
Landholding Agency: Army
Property Number: 21200810059
Status: Excess
Comments: 11,056 sq. ft., concrete/stucco, most recent use—gas station/store, off-site use only

Bldg. 1680
Fort Bliss
El Paso TX 79916
Landholding Agency: Army
Property Number: 21200810060
Status: Excess
Comments: 3690 sq. ft., concrete/stucco, most recent use—restaurant, off-site use only

**Suitable/Available Properties**

*Building*

Texas

12 Bldgs.
Fort Hood
Ft. Hood TX 76544
Landholding Agency: Army
Property Number: 21200820153
Status: Excess
Directions: 56522, 56523, 56525, 56533, 56534, 56535, 56539, 56542, 56543, 56544, 56545, 56549
Comments: 600/607 sq. ft., presence of asbestos, most recent use—dining, off-site use only

10 Bldgs.
Fort Hood
Ft. Hood TX 76544
Landholding Agency: Army
Property Number: Army 21200820154
Status: Excess
Directions: 56622, 56623, 56624, 56625, 56629, 56632, 56633, 56634, 56635, 56639
Comments: 500/507 sq. ft., presence of asbestos, most recent use—dining, off-site use only

Utah

Bldg. 00001
Borgstrom Hall USARC
Ogden UT 84401
Landholding Agency: Army
Property Number: 21200740196
Status: Excess
Comments: 16,543 sq. ft., most recent use—training center, off-site use only

**Suitable/Available Properties**

*Building*

Utah

Bldg. 00002
Borgstrom Hall USARC
Ogden UT 84401
Landholding Agency: Army
Property Number: 21200740197
Status: Excess
Comments: 3842 sq. ft., most recent use—vehicle maint. shop, off-site use only

Bldg. 00005
Borgstrom Hall USARC
Ogden UT 84401
Landholding Agency: Army
Property Number: 21200740198
Status: Excess
Comments: 96 sq. ft., most recent use—storage, off-site use only

Virginia

Bldg. 1559
Fort Eustis
Ft. Eustis VA 23604
Landholding Agency: Army
Landholding Agency: Army
Property Number: 21200130156
Status: Unutilized
Comments: 2892 sq. ft., most recent use—storage, off-site use only

Fort Story
Ft. Story VA 23459
Landholding Agency: Army
Property Number: 21200720065
Status: Unutilized
Comments: 525 sq. ft., most recent use—power plant, off-site use only

**Suitable/Available Properties**

*Building*

Virginia

Bldg. 00942
Fort Story
Ft. Story VA 23459
Landholding Agency: Army
Property Number: 21200720066
Status: Unutilized
Comments: 84 sq ft., most recent use—shower, off-site use only

Bldg. 01025
Fort Story
Ft. Story VA 23459
Landholding Agency: Army
Property Number: 21200720070
Status: Unutilized
Comments: 4800 sq. ft., most recent use—admin., off-site use only

Bldg. 01028
Fort Story
Ft. Story VA 23459
Landholding Agency: Army
Property Number: 21200720071
Status: Unutilized
Comments: 2398 sq. ft., most recent use—admin., off-site use only

Bldg. 01633
Fort Eustis
Ft. Eustis VA 23604
Landholding Agency Army
Property Number: 21200720076
Status: Unutilized
Comments: 240 sq. ft., most recent use—storage, off-site use only

**Suitable/Available Properties**

*Building*

Virginia

Bldg. 02786
Fort Eustis
Ft. Eustis VA 23604

Landholding Agency: Army
Property Number: 21200720084
Status: Unutilized
Comments: 1596 sq. ft., most recent use—admin., off-site use only

Bldg. P0838
Fort Eustis
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 21200830005
Status: Unutilized
Comments: 576 sq. ft., most recent use—rec shelter, off-site use only

Washington

Bldg. CO909, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630205
Status: Unutilized
Comments: 1984 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 1164, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630213
Status: Unutilized
Comments: 230 sq. ft., possible asbestos/lead paint, most recent use—storehouse, off-site use only

**Suitable/Available Properties**

*Building*

Washington

Bldg. 1307, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630216
Status: Unutilized
Comments: 1092 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 1309, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630217
Status: Unutilized
Comments: 1092 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 2167, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630218
Status: Unutilized
Comments: 288 sq. ft., possible asbestos/lead paint, most recent use—warehouse, off-site use only

Bldg. 4078, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630219
Status: Unutilized
Comments: 10,200 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—warehouse, off-site use only

**Suitable/Available Properties**

*Building*

Washington

Bldg. 9599, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630220
Status: Unutilized
Comments: 12,366 sq. ft., possible asbestos/lead paint, most recent use—warehouse, off-site use only

Bldg. A1404, Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199640570
Status: Unutilized
Comments: 557 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. EO347, Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199710156
Status: Unutilized
Comments: 1800 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. B1008, Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199720216
Status: Unutilized
Comments: 7387 sq. ft., 2-story, needs rehab, possible asbestos/lead paint, most recent use -medical clinic, off-site use only

**Suitable/Available Properties**

*Building*

Washington

Bldgs. CO509, CO709, CO720
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199810372
Status: Unutilized
Comments: 1984 sq. ft., possible asbestos/lead paint, needs rehab, most recent use—storage, offsite use only

Bldg. 5162, Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199830419
Status: Unutilized
Comments: 2360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—office, offsite use only

Bldg. 5224
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199830433
Status: Unutilized
Comments: 2360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—educ. fac., off-site use only

**Suitable/Available Properties**

*Building*

Washington

Bldg. U001B, Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920237
Status: Excess
Comments: 54 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U001C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920238
Status: Unutilized
Comments: 960 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—supply, offsite use only

10 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920239
Status: Excess
Directions: U002B, U002C, U005C, U015I, U016E, U019C, U022A, U028B, 0091A, U093C
Comments: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

**Suitable/Available Properties**

*Building*

Washington

6 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920240
Status: Unutilized
Directions: U003A, U004B, U006C, U015B, U016B, U019B
Comments: 54 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U004D
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920241
Status: Unutilized
Comments: 960 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—supply, off-site use only

Bldg. U005A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920242
Status: Unutilized
Comments: 360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

**Suitable/Available Properties**

*Building*

Washington

7 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920245
Status: Excess
Directions: U014A, U022B, U023A, U043B, U059B, U060A, U101A
Comments: Needs repair, presence of asbestos/lead paint, most recent use—ofc/tower/support, off-site use only

Bldg. U015J
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920246
Status: Excess

Comments: 144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only

Bldg. U018B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920247
Status: Unutilized
Comments: 121 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

**Suitable/Available Properties**

*Building*

Washington

Bldg. U018C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920248
Status: Unutilized
Comments: 48 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. U024D
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920250
Status: Unutilized
Comments: 120 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—ammo bldg., off-site use only

Bldg. U027A
Fort Lewis
Ft. Lewis Co: Pierce WA
Landholding Agency: Army
Property Number: 21199920251
Status: Excess
Comments: 64 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tire house, off-site use only

**Suitable/Available Properties**

*Building*

Washington

Bldg. U031A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920253
Status: Excess
Comments: 3456 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—line shed, off-site use only

Bldg. U031C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920254
Status: Unutilized
Comments: 32 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. U040D
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920255
Status: Excess
Comments: 800 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

**Suitable/Available Properties**

*Building*

Washington

Bldgs. U052C, U052H
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920256
Status: Excess
Comments: Various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldgs. U035A, U035B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920257
Status: Excess
Comments: 192 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

Bldg. U035C
Fort Lewis
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920258
Status: Excess
Comments: 242 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

**Suitable/Available Properties**

*Building*

Washington

7 Bldg. U039A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920259
Status: Excess
Comments: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower/support, offsite use only

Bldg. U039B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920260
Status: Excess
Comments: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—grandstand/bleachers, off-site use only

Bldg. U039C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920261
Status: Excess
Comments: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only

**Suitable/Available Properties**

*Building*

Washington

Bldg. U043A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920262
Status: Excess
Comments: 132 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldg. U052A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920263
Status: Excess
Comments: 69 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only

Bldg. U052E
Fort Lewis
Ft. Lewis Co: Pierce WA
Landholding Agency: Army
Property Number: 21199920264
Status: Excess
Comments: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

**Suitable/Available Properties**

*Building*

Washington

Bldg. U052G
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920265
Status: Excess
Comments: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

3 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920266
Status: Excess
Directions: U058A, U103A, U018A
Comments: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U059A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920267
Status: Excess
Comments: 16 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only

**Suitable/Available Properties**

*Building*

Washington

Bldg. U093B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920268
Status: Excess
Comments: 680 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

4 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920269
Status: Excess
Directions: U101B, U101C, U507B, U557A

Comments: 400 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. U110B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920272
Status: Excess
Comments: 138 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only

**Suitable/Available Properties**

*Building*

Washington

6 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920273
Status: Excess
Directions: U111A, U015A, U024E, U052F, U109A, U110A
Comments: 1000 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support/shelter/mess, off-site use only

Bldg. U112A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920274
Status: Excess
Comments: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

Bldg. U115A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920275
Status: Excess
Comments: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only

**Suitable/Available Properties**

*Building*

Washington

Bldg. U507A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920276
Status: Excess
Comments: 400 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only

Bldg. C0120
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920281
Status: Excess
Comments: 384 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—scale house, off-site use only

Bldg. 01205
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920290
Status: Excess
Comments: 87 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storehouse, off-site use only

**Suitable/Available Properties**

*Building*

Washington

Bldg. 01259
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920291
Status: Excess
Comments: 16 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 01266
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920292
Status: Excess
Comments: 45 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

Bldg. 1445
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920294
Status: Excess
Comments: 144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—generator bldg., off-site use only

**Suitable/Available Properties**

*Building*

Washington

Bldgs. 03091, 03099
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920296
Status: Excess
Comments: various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only

Bldg. 4040
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920298
Status: Excess
Comments: 8326 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shed, off-site use only

Bldgs. 4072, 5104
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920299
Status: Excess
Comments: 24/36 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

**Suitable/Available Properties**

*Building*

Washington

Bldg. 4295
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920300
Status: Excess
Comments: 48 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 6191
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920303
Status: Excess
Comments: 3663 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—exchange branch, off-site use only

Bldgs. 08076, 08080
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920304
Status: Excess
Comments: 3660/412 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

**Suitable/Available Properties**

*Building*

Washington

Bldg. 08093
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920305
Status: Excess
Comments: 289 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—boat storage, off-site use only

Bldg. 8279
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920306
Status: Excess
Comments: 210 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—fuel disp. fac., off-site use only

Bldgs. 8280, 8291
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920307
Status: Excess
Comments: 800/464 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

**Suitable/Available Properties**

*Building*

Washington

Bldg. 8956
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920308
Status: Excess
Comments: 100 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 9530
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920309
Status: Excess

Comments: 64 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only

Bldg. 9574
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920310
Status: Excess
Comments: 6005 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—veh. shop., off-site use only

**Suitable/Available Properties**

*Building*

Washington

Bldg. 9596
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920311
Status: Excess
Comments: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—gas station, off-site use only

*Land*

Maryland

2 acres
Fort Meade
Odenton Rd/Rt 175
Ft. Meade MD 20755
Landholding Agency: Army
Property Number: 21200640095
Status: Unutilized
Comments: light industrial

16 acres
Fort Meade
Rt 198/Airport Road
Ft. Meade MD 20755
Landholding Agency: Army
Property Number: 21200640096
Status: Unutilized
Comments: light industrial

**Suitable/Available Properties**

*Land*

Ohio

Land
Defense Supply Center
Columbus Co: Franklin OH 43216–5000
Landholding Agency: Army
Property Number: 21200340094
Status: Excess
Comments: 11 acres, railroad access

South Carolina

One Acre
Fort Jackson
Columbia Co: Richland SC 29207
Landholding Agency: Army
Property Number: 21200110089
Status: Underutilized
Comments: approx. 1 acre

Texas

1 acre
Fort Sam Houston
San Antonio Co: Bexar TX 78234
Landholding Agency: Army
Property Number: 21200440075
Status: Excess
Comments: 1 acre, grassy area

**Suitable/Unavailable Properties**

*Building*

Alabama

Bldg. 01433
Fort Rucker
Ft. Rucker Co: Dale AL 36362
Landholding Agency: Army
Property Number: 21200220098
Status: Excess
Comments: 800 sq. ft., most recent use—office, off-site use only

Bldg. 30105
Fort Rucker
Ft. Rucker Co: Dale AL 36362
Landholding Agency: Army
Property Number: 21200510052
Status: Excess
Comments: 4100 sq. ft., most recent use—admin., off-site use only

Bldg. 40115
Fort Rucker
Ft. Rucker Co: Dale AL 36362
Landholding Agency: Army
Property Number: 21200510053
Status: Excess
Comments: 34,520 sq. ft., most recent use—storage, off-site use only

Bldg. 25303
Fort Rucker
Dale AL 36362
Landholding Agency: Army
Property Number: 21200520074
Status: Excess
Comments: 800 sq. ft., most recent use—airfield operations, off-site use only

**Suitable/Unavailable Properties**

*Building*

Alabama

Bldg. 25304
Fort Rucker
Dale AL 36362
Landholding Agency: Army
Property Number: 21200520075
Status: Excess
Comments: 1200 sq. ft., poor condition, most recent use—fire station, off-site use only

Arizona

Bldg. 22529
Fort Huachuca
Cochise AZ 85613–7010
Landholding Agency: Army
Property Number: 21200520077
Status: Excess
Comments: 2543 sq. ft., most recent use—storage, off-site use only

Bldg. 22541
Fort Huachuca
Cochise AZ 85613–7010
Landholding Agency: Army
Property Number: 21200520078
Status: Excess
Comments: 1300 sq. ft., most recent use—storage, off-site use only

Bldg. 30020
Fort Huachuca
Cochise AZ 85613–7010
Landholding Agency: Army
Property Number: 21200520079
Status: Excess
Comments: 1305 sq. ft., most recent use—storage, off-site use only

**Suitable/Unavailable Properties**

*Building*

Arizona

Bldg. 30021
Fort Huachuca
Cochise AZ 85613–7010
Landholding Agency: Army
Property Number: 21200520080
Status: Excess
Comments: 144 sq. ft., most recent use—storage, off-site use only

Bldg. 22040
Fort Huachuca
Cochise AZ 85613
Landholding Agency: Army
Property Number: 21200540076
Status: Excess
Comments: 1131 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 22540
Fort Huachuca
Cochise AZ 85613–7010
Landholding Agency: Army
Property Number: 21200620067
Status: Excess
Comments: 958 sq. ft., most recent use—storage, off-site use only

**Suitable/Unavailable Properties**

*Building*

Colorado

Bldg. S6264
Fort Carson
Ft. Carson Co: El Paso CO 80913
Landholding Agency: Army
Property Number: 21200340084
Status: Unutilized
Comments: 19,499 sq. ft., most recent use—office, off-site use only

Bldg. S6285
Fort Carson
Ft. Carson Co: El Paso CO 80913
Landholding Agency: Army
Property Number: 21200420176
Status: Unutilized
Comments: 19,478 sq. ft., most recent use—admin., off-site use only

Bldg. S6287
Fort Carson
Ft. Carson Co: El Paso CO 80913
Landholding Agency: Army
Property Number: 21200420177
Status: Unutilized
Comments: 10,076 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldg. 06225
Fort Carson
El Paso CO 80913–4001
Landholding Agency: Army
Property Number: 21200520084
Status: Unutilized
Comments: 24,263 sq. ft., most recent use—admin., off-site use only

**Suitable/Unavailable Properties**

*Building*

Georgia

Bldg. T201
Hunter Army Airfield
Garrison Co: Chatham GA 31409

Landholding Agency: Army
Property Number: 21200420002
Status: Excess
Comments: 1828 sq. ft., most recent use—credit union, off-site use only

Bldg. T234
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 21200420008
Status: Excess
Comments: 2624 sq. ft., most recent use—admin., off-site use only

Bldg. T702
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 21200420010
Status: Excess
Comments: 9190 sq. ft., most recent use—storage, off-site use only

Bldg. T703
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Landholding Agency:
Army
Property Number: 21200420011
Status: Excess
Comments: 9190 sq. ft., most recent use—storage, off-site use only

**Suitable/Unavailable Properties**

*Building*

Georgia

Bldg. T704
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 21200420012
Status: Excess
Comments: 9190 sq. ft., most recent use—storage, off-site use only

Bldg. P813
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 21200420013
Status: Excess
Comments: 43,055 sq. ft., most recent use—maint. hanger/Co Hq., off-site use only

Bldgs. S843, S844, S845
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 21200420014
Status: Excess
Comments: 9383 sq. ft., most recent use—maint hanger, off-site use only

Bldg. P925
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 21200420015
Status: Excess
Comments: 27,681 sq. ft., most recent use—fitness center, off-site use only

**Suitable/Unavailable Properties**

*Building*

Georgia

Bldg. P1277
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 21200420024
Status: Excess
Comments: 13,981 sq. ft., most recent use—barracks/dining, off-site use only

Bldg. T1412
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 21200420025
Status: Excess
Comments: 9186 sq. ft., most recent use—warehouse, off-site use only

Bldg. 8658
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 21200420029
Status: Excess
Comments: 8470 sq. ft., most recent use—storage, off-site use only

Bldg. 8659
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 21200420030
Status: Excess
Comments: 8470 sq. ft., most recent use—storage, off-site use only

**Suitable/Unavailable Properties**

*Building*

Georgia

Bldgs. 8675, 8676
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 21200420031
Status: Excess
Comments: 4000 sq. ft., most recent use—ship/recv facility, off-site use only

Bldg. 5978
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Landholding Agency: Army
Property Number: 21200420038
Status: Excess
Comments: 1344 sq. ft., most recent use—igloo storage, off-site use only

Bldg. 5993
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Landholding Agency: Army
Property Number: 21200420041
Status: Excess
Comments: 960 sq. ft., most recent use—storage, off-site use only

Bldg. 5994
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Landholding Agency: Army
Property Number: 21200420042
Status: Excess
Comments: 2016 sq. ft., most recent use—ammo storage, off-site use only

**Suitable/Unavailable Properties**

*Building*

Georgia

Bldg. 5995
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Landholding Agency: Army
Property Number: 21200420043
Status: Excess
Comments: 114 sq. ft., most recent use—storage, off-site use only

Bldg. T01
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420181
Status: Excess
Comments: 11,682 sq. ft., most recent use—admin., off-site use only

Bldg. T04
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420182
Status: Excess
Comments: 8292 sq. ft., most recent use—admin., off-site use only

Bldg. T05
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420183
Status: Excess
Comments: 7992 sq. ft., most recent use—admin., off-site use only

**Suitable/Unavailable Properties**

*Building*

Georgia

Bldg. T06
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420184
Status: Excess
Comments: 3305 sq. ft., most recent use—communication center, off-site use only

Bldg. T55
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420187
Status: Excess
Comments: 6490 sq. ft., most recent use—admin., off-site use only

Bldg. T85
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420188
Status: Excess
Comments: 3283 sq. ft., most recent use—post chapel, off-site use only

Bldg. T131
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420189
Status: Excess
Comments: 4720 sq. ft., most recent use—admin., off-site use only

**Suitable/Unavailable Properties**

*Building*

Georgia

Bldg. T132
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420190

Status: Excess
Comments: 4720 sq. ft., most recent use—admin., off-site use only

Bldg. T157
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420191
Status: Excess
Comments: 1440 sq. ft., most recent use—education center, off-site use only

Bldg. 01002
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420197
Status: Excess
Comments: 9267 sq. ft., most recent use—maintenance shop, off-site use only

Bldg. 01003
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420198
Status: Excess
Comments: 9267 sq. ft., most recent use—admin, off-site use only

**Suitable/Unavailable Properties**

*Building*

Georgia

Bldg. 19101
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420215
Status: Excess
Comments: 6773 sq. ft., most recent use—simulator bldg., off-site use only

Bldg. 19102
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420216
Status: Excess
Comments: 3250 sq. ft., most recent use—simulator bldg., off-site use only

Bldg. T19111
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420217
Status: Excess
Comments: 1440 sq. ft., most recent use—admin., off-site use only

Bldg. 19112
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420218
Status: Excess
Comments: 1344 sq. ft., most recent use—storage, off-site use only

**Suitable/Unavailable Properties**

*Building*

Georgia

Bldg. 19113
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420219
Status: Excess
Comments: 1440 sq. ft., most recent use—admin., off-site use only

Bldg. T19201
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420220
Status: Excess
Comments: 960 sq. ft., most recent use—physical fitness center, off-site use only

Bldg. 19202
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420221
Status: Excess
Comments: 1210 sq. ft., most recent use—community center, off-site use only

Bldg. 19204 thru 19207
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420222
Status: Excess
Comments: 960 sq. ft., most recent use—admin., off-site use only

**Suitable/Unavailable Properties**

*Building*

Georgia

Bldgs. 19208 thru 19211
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420223
Status: Excess
Comments: 1540 sq. ft., most recent use—general installation bldg., off-site use only

Bldg. 19212
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420224
Status: Excess
Comments: 1248 sq. ft., off-site use only

Bldg. 19213
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420225
Status: Excess
Comments: 1540 sq. ft., most recent use—general installation bldg., off-site use only

Bldg. 19214
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420226
Status: Excess
Comments: 1796 sq. ft., most recent use—transient UPH, off-site use only

**Suitable/Unavailable Properties**

*Building*

Georgia

Bldg. 19215
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420227
Status: Excess
Comments: 1948 sq. ft., most recent use—transient UPH, off-site use only

Bldg. 19216
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420228
Status: Excess
Comments: 1540 sq. ft., most recent use—transient UPH, off-site use only

Bldg. 19217
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420229
Status: Excess
Comments: 120 sq. ft., most recent use—nav aids bldg., off-site use only

Bldg. 19218
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420230
Status: Excess
Comments: 2925 sq. ft., most recent use—general installation bldg., off-site use only

**Suitable/ Unavailable Properties**

*Building*

Georgia

Bldgs. 19219, 19220
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420231
Status: Excess
Comments: 1200 sq. ft., most recent use—general installation bldg., off-site use only

Bldg. 19223
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420232
Status: Excess
Comments: 6433 sq. ft., most recent use—transient UPH, off-site use only

Bldg. 19225
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420233
Status: Excess
Comments: 4936 sq. ft., most recent use—dining facility, off-site use only

Bldg. 19226
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420234
Status: Excess
Comments: 136 sq. ft., most recent use—general purpose installation bldg., off-site use only

**Suitable/Unavailable Properties**

*Building*

Georgia

Bldg. T19228
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420235
Status: Excess
Comments: 400 sq. ft., most recent use—admin., off-site use only

Bldg. 19229

Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420236
Status: Excess
Comments: 640 sq. ft., most recent use—vehicle shed, off-site use only

Bldg. 19232
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420237
Status: Excess
Comments: 96 sq. ft., most recent use—general purpose installation, off-site use only

Bldg. 19233
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420238
Status: Excess
Comments: 48 sq. ft., most recent use—fire support, off-site use only

**Suitable/Unavailable Properties**

*Building*

Georgia

Bldg. 19236
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420239
Status: Excess
Comments: 1617 sq. ft., most recent use—transient UPH, off-site use only

Bldg. 19238
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420240
Status: Excess
Comments: 738 sq. ft., off-site use only

Bldg. 01674
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Landholding Agency: Army
Property Number: 21200510056
Status: Unutilized
Comments: 5311 sq. ft., needs rehab, most recent use—gen. inst., off-site use only

Bldg. 01675
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Landholding Agency: Army
Property Number: 21200510057
Status: Unutilized
Comments: 5475 sq. ft., needs rehab, most recent use—gen. inst., off-site use only

**Suitable/Unavailable Properties**

*Building*

Georgia

Bldg. 01676
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Landholding Agency: Army
Property Number: 21200510058
Status: Unutilized
Comments: 7209 sq. ft., needs rehab, most recent use—gen. inst., off-site use only

Bldg. 01677
Fort Benning
Ft. Benning GA 31905
Landholding Agency: Army
Property Number: 21200510059
Status: Unutilized
Comments: 5311 sq. ft., needs rehab, most recent use—gen. inst., off-site use only

Bldg. 01678
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Landholding Agency: Army
Property Number: 21200510060
Status: Unutilized
Comments: 6488 sq. ft., needs rehab, most recent use—gen. inst., off-site use only

Bldg. 00051
Fort Stewart
Liberty GA 31314
Landholding Agency: Army
Property Number: 21200520087
Status: Excess
Comments: 3196 sq. ft., most recent use—court room, off-site use only

**Suitable/Unavailable Properties**

*Building*

Georgia

Bldg. 00052
Fort Stewart
Liberty GA 31314
Landholding Agency: Army
Property Number: 21200520088
Status: Excess
Comments: 1250 sq. ft., most recent use—admin., off-site use only

Bldg. 00053
Fort Stewart
Liberty GA 31314
Landholding Agency: Army
Property Number: 21200520089
Status: Excess
Comments: 2844 sq. ft., most recent use—admin., off-site use only

Bldg. 00054
Fort Stewart
Liberty GA 31314
Landholding Agency: Army
Property Number: 21200520090
Status: Excess
Comments: 4425 sq. ft., most recent use—admin., off-site use only

Bldg. 01243
Hunter Army Airfield
Savannah Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 21200610040
Status: Excess
Comments: 1258 sq. ft., most recent use—ref/ac facility, off-site use only

**Suitable/Unavailable Properties**

*Building*

Georgia

Bldg. 01244
Hunter Army Airfield
Savannah Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 21200610041
Status: Excess
Comments: 4096 sq. ft., presence of asbestos, most recent use—hdqts. facility, off-site use only

Bldg. 01318
Hunter Army Airfield
Savannah Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 21200610042
Status: Excess
Comments: 1500 sq. ft., most recent use—storage, off-site use only

Bldg. 00612
Fort Stewart
Liberty GA 31314
Landholding Agency: Army
Property Number: 21200610043
Status: Excess
Comments: 5298 sq. ft., needs rehab, most recent use—health clinic, off-site use only

Bldg. 00614
Fort Stewart
Liberty GA 31314
Landholding Agency: Army
Property Number: 21200610044
Status: Excess
Comments: 10,157 sq. ft., needs rehab, most recent use—brigade hqtrs, off-site use only

**Suitable/Unavailable Properties**

*Building*

Georgia

Bldg. 00618
Fort Stewart
Liberty GA 31314
Landholding Agency: Army
Property Number: 21200610045
Status: Excess
Comments: 6137 sq. ft., needs rehab, most recent use—brigade hqtrs, off-site use only

Bldg. 00628
Fort Stewart
Liberty GA 31314
Landholding Agency: Army
Property Number: 21200610046
Status: Excess
Comments: 10,050 sq. ft., needs rehab, most recent use—brigade hqtrs, off-site use only

Bldg. 01079
Fort Stewart
Liberty GA 31314
Landholding Agency: Army
Property Number: 21200610047
Status: Excess
Comments: 7680 sq. ft., most recent use—range/target house, off-site use only

Bldg. 07901
Fort Stewart
Liberty GA 31314
Landholding Agency: Army
Property Number: 21200610049
Status: Excess
Comments: 4800 sq. ft., most recent use—range support, off-site use only

**Suitable/Unavailable Properties**

*Building*

Georgia

Bldg. 08031
Fort Stewart
Liberty GA 31314
Landholding Agency: Army
Property Number: 21200610050
Status: Excess
Comments: 1296 sq. ft., most recent use—range/target house, off-site use only

Bldg. 08081
Fort Stewart
Liberty GA 31314

Landholding Agency: Army
Property Number: 21200610052
Status: Excess
Comments: 1296 sq. ft., most recent use—range/target house, off-site use only

Bldg. 08252
Fort Stewart
Liberty GA 31314
Landholding Agency: Army
Property Number: 21200610053
Status: Excess
Comments: 145 sq. ft., most recent use—control tower, off-site use only

**Suitable/Unavailable Properties**

*Building*

Kentucky

Bldg. 06894
Fort Campbell
Christian KY 42223
Landholding Agency: Army
Property Number: 21200630070
Status: Unutilized
Comments: 4240 sq. ft., most recent use—vehicle maintenance shop, off-site use only

Bldg. 06895
Fort Campbell
Christian KY 42223
Landholding Agency: Army
Property Number: 21200630071
Status: Unutilized
Comments: 4725 sq. ft., most recent use—storage, off-site use only

Louisiana

Bldg. T401
Fort Polk
Ft. Polk LA 71459
Landholding Agency: Army
Property Number: 21200540084
Status: Unutilized
Comments: 2169 sq. ft., most recent use—admin., off-site use only

Bldgs. T406, T407, T411
Fort Polk
Ft. Polk LA 71459
Landholding Agency: Army
Property Number: 21200540085
Status: Unutilized
Comments: 6165 sq. ft., most recent use—admin., off-site use only

**Suitable/Unavailable Properties**

*Building*

Louisiana

Bldg. T412
Fort Polk
Ft. Polk LA 71459
Landholding Agency: Army
Property Number: 21200540086
Status: Unutilized
Comments: 12,251 sq. ft., most recent use—admin., off-site use only

Bldgs. T414, T421
Fort Polk
Ft. Polk LA 71459
Landholding Agency: Army
Property Number: 21200540087
Status: Unutilized
Comments: 6165/1688 sq. ft., most recent use—admin., off-site use only

Maryland

Bldg. 8608
Fort George G. Meade
Ft. Meade MD 20755–5115
Landholding Agency: Army
Property Number: 21200410099
Status: Unutilized
Comments: 2372 sq. ft., concrete block, most recent use—PX exchange, off-site use only

Bldg. 8612
Fort George G. Meade
Ft. Meade MD 20755–5115
Landholding Agency: Army
Property Number: 21200410101
Status: Unutilized
Comments: 2372 sq. ft., concrete block, most recent use—family life ctr., off-site use only

**Suitable/Unavailable Properties**

*Building*

Maryland

Bldg. 0001A
Federal Support Center
Olney Co: Montgomery MD 20882
Landholding Agency: Army
Property Number: 21200520114
Status: Unutilized
Comments: 9000 sq. ft., most recent use—storage

Bldg. 0001C
Federal Support Center
Olney Co: Montgomery MD 20882
Landholding Agency: Army
Property Number: 21200520115
Status: Unutilized
Comments: 2904 sq. ft., most recent use—mess hall

Bldgs. 00032, 00H14, 00H24
Federal Support Center
Olney Co: Montgomery MD 20882
Landholding Agency: Army
Property Number: 21200520116
Status: Unutilized
Comments: Various sq. ft., most recent use—storage

Bldgs. 00034, 00H016
Federal Support Center
Olney Co: Montgomery MD 20882
Landholding Agency: Army
Property Number: 21200520117
Status: Unutilized
Comments: 400/39 sq. ft., most recent use—storage

**Suitable/Unavailable Properties**

*Building*

Maryland

Bldgs. 00H10, 00H12
Federal Support Center
Olney Co: Montgomery MD 20882
Landholding Agency: Army
Property Number: 21200520118
Status: Unutilized
Comments: 2160/469 sq. ft., most recent use—vehicle maintenance

Michigan

Bldg. 00001
Sheridan Hall USARC
501 Euclid Avenue
Helena Co: Lewis MI 59601–2865
Landholding Agency: Army
Property Number: 21200510066
Status: Unutilized
Comments: 19,321 sq. ft., most recent use—reserve center

Missouri

Bldg. 1230
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200340087
Status: Unutilized
Comments: 9160 sq. ft., most recent use—training, off-site use only

**Suitable/Unavailable Properties**

*Building*

Missouri

Bldg. 1621
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200340088
Status: Unutilized
Comments: 2400 sq. ft., most recent use—exchange branch, off-site use only

Bldg. 5760
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200410102
Status: Unutilized
Comments: 2000 sq. ft., most recent use—classroom, off-site use only

Bldg. 5762
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200410103
Status: Unutilized
Comments: 104 sq. ft., off-site use only

Bldg. 5763
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200410104
Status: Unutilized
Comments: 120 sq. ft., most recent use—observation tower, off-site use only

**Suitable/Unavailable Properties**

*Building*

Missouri

Bldg. 5765
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200410105
Status: Unutilized
Comments: 800 sq. ft., most recent use—range support, off-site use only

Bldg. 5760
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200420059
Status: Unutilized
Comments: 2000 sq. ft., most recent use—classroom, off-site use only

Bldg. 5762
Fort Leonard Wood

Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200420060
Status: Unutilized
Comments: 104 sq. ft., off-site use only

Bldg. 5763
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200420061
Status: Unutilized
Comments: 120 sq. ft., most recent use—obs. tower, off-site use only

**Suitable/Unavailable Properties**

*Building*

Missouri

Bldg. 5765
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200420062
Status: Unutilized
Comments: 800 sq. ft., most recent use—support bldg., off-site use only

Bldg. 00467
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743
Landholding Agency: Army
Property Number: 21200530085
Status: Unutilized
Comments: 2790 sq. ft., most recent use—fast food facility, off-site use only

New York

Bldgs. 1511–1518
U.S. Military Academy
Training Area
Highlands Co: Orange NY 10996
Landholding Agency: Army
Property Number: 21200320160
Status: Unutilized
Comments: 2400 sq. ft. each, needs rehab, most recent use—barracks, off-site use only

**Suitable/Unavailable Properties**

*Building*

New York

Bldgs. 1523–1526
U.S. Military Academy
Training Area
Highlands Co: Orange NY 10996
Landholding Agency: Army
Property Number: 21200320161
Status: Unutilized
Comments: 2400 sq. ft. each, needs rehab, most recent use—barracks, off-site use only

Bldgs. 1704–1705, 1721–1722
U.S. Military Academy
Training Area
Highlands Co: Orange NY 10996
Landholding Agency: Army
Property Number: 21200320162
Status: Unutilized
Comments: 2400 sq. ft. each, needs rehab, most recent use—barracks, off-site use only

Bldg. 1723
U.S. Military Academy
Training Area
Highlands Co: Orange NY 10996
Landholding Agency: Army
Property Number: 21200320163
Status: Unutilized
Comments: 2400 sq. ft., needs rehab, most recent use—day room, off-site use only

**Suitable/Unavailable Properties**

*Building*

New York

Bldgs. 1706–1709
U.S. Military Academy
Training Area
Highlands Co: Orange NY 10996
Landholding Agency: Army
Property Number: 21200320164
Status: Unutilized
Comments: 2400 sq. ft. each, needs rehab, most recent use—barracks, off-site use only

Bldgs. 1731–1735
U.S. Military Academy
Training Area
Highlands Co: Orange NY 10996
Landholding Agency: Army
Property Number: 21200320165
Status: Unutilized
Comments: 2400 sq. ft. each, needs rehab, most recent use—barracks, off-site use only

*Building*

North Carolina

Bldg. N4116
Fort Bragg
Ft. Bragg Co: Cumberland NC 28310
Landholding Agency: Army
Property Number: 21200240087
Status: Excess
Comments: 3944 sq. ft., possible asbestos/lead paint, most recent use—community facility, off-site use only

**Suitable/Unavailable Properties**

*Building*

Texas

Bldgs. 4219, 4227
Fort Hood
Ft. Hood Co: Bell TX 76544
Landholding Agency: Army
Property Number: 21200220139
Status: Unutilized
Comments: 8056, 500 sq. ft., most recent use—admin., off-site use only

Bldgs. 4229, 4230, 4231
Fort Hood
Ft. Hood Co: Bell TX 76544
Landholding Agency: Army
Property Number: 21200220140
Status: Unutilized
Comments: 9000 sq. ft., most recent use—hq. bldg., off-site use only

Bldgs. 4244, 4246
Fort Hood
Ft. Hood Co: Bell TX 76544
Landholding Agency: Army
Property Number: 21200220141
Status: Unutilized
Comments: 9000 sq. ft., most recent use—storage, off-site use only

Bldgs. 4260, 4261, 4262
Fort Hood
Ft. Hood Co: Bell TX 76544
Landholding Agency: Army
Property Number: 21200220142
Status: Unutilized
Comments: 7680 sq. ft., most recent use—storage, off-site use only

**Suitable/Unavailable Properties**

*Building*

Texas

Bldg. 04335
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200440090
Status: Excess
Comments: 3378 sq. ft., possible asbestos, most recent use—general, off-site use only

Bldg. 04465
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200440094
Status: Excess
Comments: 5310 sq. ft., possible asbestos, most recent use—general, off-site use only

Bldg. 04468
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200440096
Status: Excess
Comments: 3100 sq. ft., possible asbestos, most recent use—misc., off-site use only

Bldgs. 04475–04476
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200440098
Status: Excess
Comments: 3241 sq. ft., possible asbestos, most recent use—general, off-site use only

**Suitable/Unavailable Properties**

*Building*

Texas

Bldg. 04477
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200440099
Status: Excess
Comments: 3100 sq. ft., possible asbestos, most recent use—general, off-site use only

Bldg. 07002
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200440100
Status: Excess
Comments: 2598 sq. ft., possible asbestos, most recent use—fire station, off-site use only

Bldg. 57001
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200440105
Status: Excess
Comments: 53,024 sq. ft., possible asbestos, most recent use—storage, off-site use only

Bldgs. 125, 126
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620075
Status: Excess
Comments: 2700/7200 sq. ft., presence of asbestos, most recent use—admin., off-site use only

**Suitable/Unavailable Properties**

*Building*

Texas

Bldg. 190
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620076
Status: Excess
Comments: 2995 sq. ft., presence of asbestos, most recent use—conf. center, off-site use only

Bldg. 02240
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620078
Status: Excess
Comments: 487 sq. ft., presence of asbestos, most recent use—pool svc bldg, off-site use only

Bldg. 04164
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620079
Status: Excess
Comments: 2253 sq. ft., presence of asbestos, most recent use—storage, off-site use only

Bldgs. 04218, 04228
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620080
Status: Excess
Comments: 4682/9000 sq. ft., presence of asbestos, most recent use—admin, off-site use only

**Suitable/Unavailable Properties**

*Building*

Texas

Bldg. 04272
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620081
Status: Excess
Comments: 7680 sq. ft., presence of asbestos, most recent use—storage, off-site use only

Bldg. 04415
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620083
Status: Excess
Comments: 1750 sq. ft., presence of asbestos, most recent use—classroom, off-site use only

4 Bldgs
Fort Hood
04419, 04420, 04421, 04424
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620084
Status: Excess
Comments: 5310 sq. ft., presence of asbestos, most recent use—admin., off-site use only

**Suitable/Unavailable Properties**

*Building*

**Texas**

4 Bldgs.
Fort Hood
04425, 04426, 04427, 04429
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620085
Status: Excess
Comments: 5310 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldg. 04430
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620087
Status: Excess
Comments: 3241 sq. ft., presence of asbestos, most recent use—storage, off-site use only

Bldg. 04434
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620088
Status: Excess
Comments: 5310 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldg. 04439
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620089
Status: Excess
Comments: 3312 sq. ft., presence of asbestos, most recent use—co ops bldg, off-site use only

**Suitable/Unavailable Properties**

*Building*

Texas

Bldgs. 04470, 04471
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620090
Status: Excess
Comments: 3241 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldg. 04493
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620091
Status: Excess
Comments: 3108 sq. ft., presence of asbestos, most recent use—housing maint., off-site use only

Bldg. 04494
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620092
Status: Excess
Comments: 2686 sq. ft., presence of asbestos, most recent use—repair bays, off-site use only

Bldg. 04632
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620093
Status: Excess
Comments: 4000 sq. ft., presence of asbestos, most recent use—storage, off-site use only

**Suitable/Unavailable Properties**

*Building*

Texas

Bldg. 04640
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620094
Status: Excess
Comments: 1600 sq. ft., presence of asbestos, most recent use—storage, off-site use only

Bldg. 04645
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620095
Status: Excess
Comments: 5300 sq. ft., presence of asbestos, most recent use—storage, off-site use only

Bldg. 04906
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620096
Status: Excess
Comments: 1040 sq. ft., presence of asbestos, most recent use—storage, off-site use only

Bldg. 20121
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620097
Status: Excess
Comments: 5200 sq. ft., presence of asbestos, most recent use—rec center, off-site use only

**Suitable/Unavailable Properties**

*Building*

Texas

Bldg. 91052
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620101
Status: Excess
Comments: 224 sq. ft., presence of asbestos, most recent use—lab/test, off-site use only

Bldg. 1345
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740070
Status: Excess
Comments: 240 sq. ft., presence of asbestos, most recent use—oil storage, off-site use only

Bldgs. 1348, 1941
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740071
Status: Excess
Comments: 640/900 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldg. 1919
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740072
Status: Excess

Comments: 80 sq. ft., presence of asbestos, most recent use—pump station, off-site use only

**Suitable/Unavailable Properties**

*Building*

Texas

Bldg. 1943
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740073
Status: Excess
Comments: 780 sq. ft., presence of asbestos, most recent use—rod & gun club, off-site use only

Bldg. 1946
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740074
Status: Excess
Comments: 2880 sq. ft., presence of asbestos, most recent use—storage, off-site use only

Bldg. 4205
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740075
Status: Excess
Comments: 600 sq. ft., presence of asbestos, most recent use—storage, off-site use only

Bldg. 4207
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740076
Status: Excess
Comments: 2240 sq. ft., presence of asbestos, most recent use—maint. shop, off-site use only

**Suitable/Unavailable Properties**

*Building*

Texas

Bldg. 4208
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740077
Status: Excess
Comments: 9464 sq. ft., presence of asbestos, most recent use—warehouse, off-site use only

Bldgs. 4210, 4211, 4216
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740078
Status: Excess
Comments: 4625/5280 sq. ft., presence of asbestos, most recent use—maint., off-site use only

Bldg. 4219A
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740079
Status: Excess
Comments: 446 sq. ft., presence of asbestos, most recent use—storage, off-site use only

Bldg. 04252
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740081
Status: Excess
Comments: 9000 sq. ft., presence of asbestos, most recent use—storage, off-site use only

**Suitable/Unavailable Properties**

*Building*

Texas

Bldg. 4255
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740082
Status: Excess
Comments: 448 sq ft., presence of asbestos, off-site use only

Bldg. 04480
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740083
Status: Excess
Comments: 2700 sq. ft., presence of asbestos, most recent use—storage, off-site use only

Bldg. 04485
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740084
Status: Excess
Comments: 640 sq. ft., presence of asbestos, most recent use—maint., off-site use only

Bldgs. 04487, 04488
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740085
Status: Excess
Comments: 48/80 sq. ft., presence of asbestos, most recent use—utility bldg., off-site use only

**Suitable/Unavailable Properties**

*Building*

Texas

Bldg. 04489
Fort Hood
Ft. Hood TX 76544
Landholding Agency: Army
Property Number: 21200740086
Status: Excess
Comments: 880 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldgs. 4491, 4492
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740087
Status: Excess
Comments: 3108/1040 sq. ft., presence of asbestos, most recent use—maint., off-site use only

Bldgs. 04902, 04905
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740088
Status: Excess
Comments: 2575/6136 sq. ft., presence of asbestos, most recent use—vet bldg., off-site use only

Bldgs. 04914, 04915, 04916
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740089
Status: Excess
Comments: 371 sq. ft., presence of asbestos, most recent use—animal shelter, off-site use only

**Suitable/Unavailable Properties**

*Building*

Texas

Bldg. 20102
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740091
Status: Excess
Comments: 252 sq. ft., presence of asbestos, most recent use—recreation services, off-site use only

Bldg. 20118
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740092
Status: Excess
Comments: 320 sq. ft., presence of asbestos, most recent use—maint., off-site use only

Bldg. 29027
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740093
Status: Excess
Comments: 2240 sq. ft., presence of asbestos, most recent use—hdqts bldg, off-site use only

Bldg. 56017
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740094
Status: Excess
Comments: 2592 sq. ft., presence of asbestos, most recent use—admin., off-site use only

**Suitable/Unavailable Properties**

*Building*

Texas

Bldg. 56202
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740095
Status: Excess
Comments: 1152 sq. ft., presence of asbestos, most recent use—training, off-site use only

Bldg. 56224
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740096
Status: Excess
Comments: 80 sq. ft., presence of asbestos, off-site use only

Bldg. 56305
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740097
Status: Excess
Comments: 2160 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldg. 56311
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740098
Status: Excess
Comments: 480 sq. ft., presence of asbestos, most recent use—laundry, off-site use only

**Suitable/Unavailable Properties**

*Building*

Texas

Bldg. 56327
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740099
Status: Excess
Comments: 6000 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldg. 56329
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740100
Status: Excess
Comments: 2080 sq. ft., presence of asbestos, most recent use—officers qtrs., off-site use only

9 Bldgs.
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740101
Status: Excess
Directions: 56526, 56527, 56528, 56530, 56531, 56536, 56537, 56538, 56540
Comments: various sq. ft., presence of asbestos, most recent use—lavatory, off-site use only

**Suitable/Unavailable Properties**

*Building*

Texas

Bldg. 92043
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740102
Status: Excess
Comments: 450 sq. ft., presence of asbestos, most recent use—storage, off-site use only

Bldg. 92072
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740103
Status: Excess
Comments: 2400 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldg. 92083
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740104
Status: Excess
Comments: 240 sq. ft., presence of asbestos, most recent use—utility bldg., off-site use only

Bldgs. 04213, 04227
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740189
Status: Excess
Comments: 14183/10500 sq. ft., presence of asbestos, most recent use—admin., off-site use only

**Suitable/Unavailable Properties**

*Building*

Texas

Bldg. 4404
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740190
Status: Excess
Comments: 8043 sq ft., presence of asbestos, most recent use—training bldg., off-site use only

Bldg. 56607
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740191
Status: Excess
Comments: 3552 sq. ft., presence of asbestos, most recent use—chapel, off-site use only

Bldg. 91041
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740192
Status: Excess
Comments: 1920 sq. ft., presence of asbestos, most recent use—shed, off-site use only

5 Bldgs.
Fort Hood
93010, 93011, 93012, 93014
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740193
Status: Excess
Comments: 210/800 sq. ft., presence of asbestos, most recent use—private club, off-site use only

**Suitable/Unavailable Properties**

*Building*

Texas

Bldg. 94031
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740194
Status: Excess
Comments: 1008 sq. ft., presence of asbestos, most recent use—training, off-site use only

Virginia

Bldg. T2827
Fort Pickett
Blackstone Co: Nottoway VA 23824
Landholding Agency: Army
Property Number: 21200320172
Status: Unutilized
Comments: 3550 sq. ft., presence of asbestos, most recent use—dining, off-site use only

Bldg. T2841
Fort Pickett
Blackstone Co: Nottoway VA 23824
Landholding Agency: Army
Property Number: 21200320173
Status: Unutilized
Comments: 2950 sq. ft., presence of asbestos, most recent use—dining, off-site use only

Bldg. 01014
Fort Story
Ft. Story VA 23459
Landholding Agency: Army
Property Number: 21200720067
Status: Unutilized
Comments: 1014 sq. ft., most recent use—admin., off-site use only

**Suitable/Unavailable Properties**

*Building*

Virginia

Bldg. 01022
Fort Story
Ft. Story VA 23459
Landholding Agency: Army
Property Number: 21200720068
Status: Unutilized
Comments: 2398 sq. ft., most recent use—dining, off-site use only

4 Bldgs.
Fort Story
01023, 01029, 01036, 01038
Ft. Story VA 23459
Landholding Agency: Army
Property Number: 21200720069
Status: Unutilized
Comments: 4800 sq. ft., most recent use—barracks, off-site use only

Bldg. 01063
Fort Story
Ft. Story VA 23459
Landholding Agency: Army
Property Number: 21200720072
Status: Unutilized
Comments: 2000 sq. ft., most recent use—storage, off-site use only

Bldg. 00215
Fort Eustis
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 21200720073
Status: Unutilized
Comments: 2540 sq. ft., most recent use—admin., off-site use only

**Suitable/Unavailable Properties**

*Building*

Virginia

4 Bldgs.
Fort Eustis
01514, 01523, 01528, 01529
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 21200720074
Status: Unutilized
Comments: 4720 sq. ft., most recent use—admin., off-site use only

4 Bldgs.
Fort Eustis
01534, 01542, 01549, 01557
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 21200720075
Status: Unutilized
Comments: 4720 sq. ft., most recent use—admin., off-site use only

Bldgs. 01707, 01719
Fort Eustis
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 21200720077
Status: Unutilized
Comments: 4720 sq. ft., most recent use—admin., off-site use only

**Suitable/Unavailable Properties**

*Building*

Virginia

Bldg. 01720
Fort Eustis
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 21200720078
Status: Unutilized
Comments: 1984 sq. ft., most recent use—admin., off-site use only

Bldgs. 01721, 01725
Fort Eustis
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 21200720079
Status: Unutilized
Comments: 4720 sq. ft., most recent use—admin., off-site use only

Bldgs. 01726, 01735, 01736
Fort Eustis
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 21200720080
Status: Unutilized
Comments: 1144 sq. ft., most recent use—admin., off-site use only

Bldgs. 01734, 01745, 01747
Fort Eustis
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 21200720081
Status: Unutilized
Comments: 4720 sq. ft., most recent use—admin., off-site use only

**Suitable/Unavailable Properties**

*Building*

Virginia

Bldg. 01741
Fort Eustis
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 21200720082
Status: Unutilized
Comments: 1984 sq. ft., most recent use—admin., off-site use only

Bldg. 02720
Fort Eustis
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 21200720083
Status: Unutilized
Comments: 400 sq. ft., most recent use—storage, off-site use only

Washington

Bldg. 05904
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21200240092
Status: Excess
Comments: 82 sq. ft., most recent use—guard shack, off-site use only

**Unsuitable Properties**

*Buildings (by State)*

Alabama

99 Bldgs.
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200040005–21200040012, 21200120018, 21200220003–21200220004, 21200240007–21200240022, 21200330001–2120330004, 21200340011, 21200340095, 21200420068–21200420071, 21200440001, 21200520002, 21200540002–21200540006, 21200610003–21200610004, 21200620002, 21200630020, 21200740108, 21200810002, 21200830007
Status: Unutilized
Reason: Secured Area, Extensive deterioration

19 Bldgs.
Fort Rucker
Ft. Rucker Co: Dale AL 36362
Landholding Agency: Army
Property Number: 21200040013, 21200440005, 21200540001, 21200540100, 21200610008, 21200620001, 21200640002–21200640005, 21200720001
Status: Unutilized
Reason: Extensive deterioration

Bldg. 01271
Fort McClellan
Ft. McClellan Co: Calhoun AL 36205–5000
Landholding Agency: Army
Property Number: 21200430004
Status: Unutilized
Reason: Extensive deterioration

5 Bldgs.
Anniston Army Depot
Calhoun AL 36201
Landholding Agency: Army
Property Number: 21200830008
Status: Unutilized
Directions: 0073, 00359, 00699, 1078A 1078D
Reasons: Extensive deterioration

Alaska

3 Bldgs.
Fort Wainwright
Ft. Wainwright AK 99703
Landholding Agency: Army
Property Number: 21200610001–21200610002
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured area, Floodway

5 Bldgs.
Fort Richardson
Ft. Richardson Co: AK 99505
Landholding Agency: Army
Property Number: 21200340006, 21200820058, 21200830006
Status: Excess
Reason: Extensive deterioration

Bldg. 02A60
Noatak Armory
Kotzebue AK
Landholding Agency: Army
Property Number: 21200740105
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material

Arizona

32 Bldgs.
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–
Location: 12 miles west of Flagstaff, Arizona on I–40
Landholding Agency: Army
Property Number: 219014560–219014591
Status: Underutilized
Reason: Secured Area

10 properties: 753 earth covered igloos; above ground standard magazines
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–
Location: 12 miles west of Flagstaff, Arizona on I–40.
Landholding Agency: Army
Property Number: 219014592–219014601
Status: Underutilized
Reason: Secured Area

7 Bldgs.
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–5000
Location: 12 miles west of Flagstaff on I–40
Landholding Agency: Army
Property Number: 219030273, 219120177–219120181
Status: Unutilized
Reason: Secured Area

102 Bldgs.
Camp Navajo
Bellemont Co: AZ 86015
Landholding Agency: Army
Property Number: 21200140006–21200140010, 21200740109–21200740114
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area (Most are extensively deteriorated)

7 Bldgs.
Papago Park Military Rsv
Phoenix AZ 85008
Landholding Agency: Army
Property Number: 21200740001–21200740002
Status: Unutilized
Reason: Extensive deterioration, Within airport runway clear zone, Secured Area

6 Bldgs., Fort Huachuca
Cochise AZ 85613
Landholding Agency: Army
Property Number: 21200820061
Status: Excess
Reason: Extensive deterioration

Arkansas

190 Bldgs.
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219630019, 219630021, 219630029, 219640462–219640477, 1200110001–21200110017, 21200140011–21200140014, 21200530001
Status: Unutilized
Reason: Extensive deterioration

20 Bldgs.
Pine Bluff Arsenal
Jefferson AR 71602
Landholding Agency: Army
Property Number: 21200820059–21200820060
Status: Unutilized
Reason: Secured Area

California

Bldg. 18
Riverbank Army Ammunition Plant
5300 Claus Road
Riverbank Co: Stanislaus CA 95367–
Landholding Agency: Army
Property Number: 219012554
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

12 Bldgs.
Riverbank Army Ammunition Plant
Riverbank Co: Stanislaus CA 95367–
Landholding Agency: Army
Property Number: 219013582–219013588, 219013590, 219240444–219240446, 21200530003
Status: Underutilized
Reason: Secured Area

Bldgs. 13, 171, 178 Riverbank Ammun Plant
5300 Claus Road
Riverbank Co: Stanislaus CA 95367–
Landholding Agency: Army
Property Number: 219120162–219120164
Status: Underutilized
Reason: Secured Area

40 Bldgs.
DDDRW Sharpe Facility
Tracy Co: San Joaquin CA 95331
Landholding Agency: Army
Property Number: 219610289, 21199930021, 21200030005–21200030015, 21200040015, 21200120029–21200120039, 21200130004, 21200240025–21200240030, 21200330007
Status: Unutilized
Reason: Secured Area

61 Bldgs.
Los Alamitos Co: Orange CA 90720–5001
Landholding Agency: Army
Property Number: 219520040, 21200530002
Status: Unutilized
Reason: Extensive deterioration

8 Bldgs.
Sierra Army Depot
Herlong Co: Lassen CA 96113
Landholding Agency: Army
Property Number: 21199840015, 21199920033–21199920036
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

575 Bldgs., Camp Roberts
Camp Roberts Co: San Obispo CA
Landholding Agency: Army
Property Number: 21199730014, 219820205–219820234, 21200530004, 21200540007–21200540031, 21200830009–21200830010
Status: Excess
Reason: Secured Area, Extensive deterioration

24 Bldgs.
Presidio of Monterey Annex
Seaside Co: Monterey CA 93944
Landholding Agency: Army
Property Number: 21199940051
Status: Unutilized
Reason: Extensive deterioration

46 Bldgs.
Fort Irwin
Ft. Irwin Co: San Bernardino CA 92310
Landholding Agency: Army
Property Number: 21199920037–21199920038, 21200030016–21200030018, 21200040014, 21200110018–21200110020, 21200130002–21200130003, 21200210001–21200210005, 21200240031–21200240033
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 00718
Fort Hunter Liggett
Monterey CA 93928
Landholding Agency: Army
Property Number: 21200820062
Status: Unutilized
Reasons: Extensive deterioration

5 Bldgs, March AFRC
Riverside CA 92518
Landholding Agency: Army
Property Number: 21200710001–21200710002
Status: Unutilized
Reasons: Extensive deterioration

Colorado

Bldgs. T–317, T–412, 431, 433
Rocky Mountain Arsenal
Commerce Co: Adams CO 80022–2180
Landholding Agency: Army
Property Number: 219320013–219320016
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

18 Bldgs. Fort Carson
Ft. Carson Co: El Paso CO 80913–5023
Landholding Agency: Army
Property Number: 219830024, 21200130006–21200130009, 21200420161–21200420164, 21200720003, 21200740003–21200740004, 21200820063
Status: Unutilized
Reason: Extensive deterioration (Some are within 2000 ft. of flammable or explosive material)

16 Bldgs., Pueblo Chemical Depot
Pueblo CO 81006–9330
Landholding Agency: Army
Property Number: 21200030019–21200030021, 21200420165–21200420166, 21200610009–21200610010, 21200630023, 21200720002, 21200720007–21200720008
Status: Unutilized
Reason: Extensive deterioration

Georgia

Fort Stewart, Sewage Treatment Plant
Ft. Stewart Co: Hinesville GA 31314
Landholding Agency: Army
Property Number: 219013922
Status: Unutilized
Reason: Sewage treatment

10 Bldgs., Fort Gordon
Augusta Co: Richmond GA 30905
Landholding Agency: Army
Property Number: 21200610012, 21200720009–21200720010
Status: Unutilized
Reason: Extensive deterioration

152 Bldgs., Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219610320, 219720017–219720019, 219810028, 219810030, 219830073, 21200030026, 21200330008–21200330010, 21200410001–21200410009, 21200430011–21200430016, 21200440009, 21200510003, 21200540032, 21200610011, 21200620004, 21200630024–21200630027, 21200640007–21200640020, 21200710011, 21200720004–21200720006, 21200740006, 21200740121–21200740122, 21200820064, 21200830011
Status: Unutilized
Reason: Extensive deterioration

33 Bldgs.
Fort Gillem
Forest Park Co: Clayton GA 30050
Landholding Agency: Army
Property Number: 219620815, 21199920044–21199920050, 21200140016, 21200220011–21200220012, 21200230005, 21200340013–21200340016, 21200420074–21200420082, 21200810003
Status: Unutilized
Reason: Extensive deterioration, Secured Area

29 Bldgs. Fort Stewart
Hinesville Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21199940060, 21200540034, 21200710005–21200710009, 21200720011, 21200740007, 21200740123–21200740125, 21200820066
Status: Unutilized
Reason: Extensive Deterioration

9 Bldgs., Hunter Army Airfield
Savannah Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 219830068, 21200710010, 21200720012, 21200740117–21200740119, 21200820065
Status: Unutilized
Reason: Extensive deterioration

6 Bldgs., Fort McPherson
Ft. McPherson Co: Fulton GA 30330–5000
Landholding Agency: Army
Property Number: 21200040016–21200040018, 21200230004, 21200520004
Status: Unutilized
Reason: Secured Area

Bldgs. 00023, 00049, 00070, Camp Merrill
Dahlonega Co: Lumpkin GA 30533
Landholding Agency: Army
Property Number: 21200520005
Status: Unutilized
Reason: Extensive deterioration

Hawaii

37 Bldgs., Schofield Barracks
Wahiawa Co: Wahiawa HI 96786
Landholding Agency: Army
Property Number: 219014836–219014837, 21200540035–21200540037, 21200620008–21200620010, 21200640022, 21200740009–21200740010, 21200810004–21200810006
Status: Unutilized
Reason: Secured Area (most are extensively deteriorated)

70 Bldgs.
Kipapa Ammo Storage Site
Honolulu Co: HI 96786
Landholding Agency: Army
Property Number: 21200520006, 21200620011
Status: Unutilized
Reason: Extensive deterioration

9 Bldgs.
Wheeler Army Airfield
Honolulu Co: HI 96786
Landholding Agency: Army
Property Number: 21200520008, 21200620006–21200620007, 21200630028, 21200830012
Status: Unutilized
Reason: Extensive deterioration

140 Bldgs., Aliamanu
Honolulu Co: HI 96818
Landholding Agency: Army
Property Number: 21200440015–21200440017, 21200620005
Status: Unutilized
Reason: Contamination (some are in a secured area.)

7 Bldgs., Kalaeloa
Kapolei HI 96707
Landholding Agency: Army
Property Number: 21200640108–21200640112
Status: Unutilized
Reasons: Extensive deterioration

Facilities 00001, 00002, 00005, 00006
Tanapag USARC
Tanapag HI
Landholding Agency: Army
Property Number: 21200740008, 21200830047
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 00528, Fort Shafter
Honolulu HI 96858
Landholding Agency: Army
Property Number: 21200820067
Status: Unutilized
Reason: Extensive deterioration

Idaho

Bldg. 00110, Wilder
Canyon ID 83676
Landholding Agency: Army
Property Number: 21200740134
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Illinois

3 Bldgs.
Rock Island Arsenal
Rock Island Co: Rock Island IL 61299–5000
Landholding Agency: Army
Property Number: 219620428, 21200140043–21200140044
Status: Unutilized
Reason: Some are in a secured area, Some are extensively deteriorated, Some are within 2000 ft. of flammable or explosive material

15 Bldgs.
Charles Melvin Price Support Center
Granite City Co: Madison IL 62040
Landholding Agency: Army
Property Number: 219820027, 21199930042–21199930053
Status: Unutilized
Reason: Secured Area, Floodway, Extensive deterioration

Indiana

139 Bldgs., Newport Army Ammunition Plant
Newport Co: Vermillion IN 4796
Landholding Agency: Army
Property Number: 219011584, 219011586–219011587, 219011589–219011590, 219011592–219011627, 219011629–219011636, 219011638–219011641, 219210149, 219430336, 219430338, 219530079–219530096, 219740021–219740026, 219820031–219820032, 21199920063, 21200330015–21200330016, 21200440019, 21200610013–21200610014, 21200710025, 21200820037
Status: Unutilized
Reason: Secured Area (some are extensively deteriorated)

2 Bldgs., Atterbury Reserve Forces Training Area
Edinburgh Co: Johnson IN 46124–1096
Landholding Agency: Army
Property Number: 219230030–219230031
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 300, 00112, 00123
Fort Benjamin Harrison
Indianapolis Co: Marion IN 46216
Landholding Agency: Army
Property Number: 21200320011, 21200430017
Status: Unutilized
Reason: Contamination

Iowa

201 Bldgs., Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638
Landholding Agency: Army
Property Number: 219012605–219012607, 219012609, 219012611, 219012613, 219012620, 219012622, 219012624, 219013706–219013738, 219120172–219120174, 219440112–219440158, 219520002, 219520070, 219740027, 21200220022, 21200230019–21200230023, 21200330012–21200330014, 21200340017, 21200420083, 21200430018, 21200440018, 21200510004–21200510006, 21200520009, 21200540038–21200540039, 21200620012, 21200710020–21200710024, 21200740126–21200740133, 21200810008
Status: Unutilized
Reason: (many are in a Secured Area), (most are within 2000 ft. of flammable or explosive material)

27 Bldgs., Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638
Landholding Agency: Army
Property Number: 219230005–219230029, 219310017, 219340091
Status: Unutilized
Reason: Extensive deterioration

Kansas

37 Bldgs.
Kansas Army Ammunition Plant
Production Area
Parsons Co: Labette KS 67357
Landholding Agency: Army
Property Number: 219011909–219011945
Status: Unutilized
Reason: Secured Area (most are within 2000 ft. of flammable or explosive material)

121 Bldgs.
Kansas Army Ammunition Plant
Parsons Co: Labette KS 67357
Landholding Agency: Army
Property Number: 219620518–219620638
Status: Unutilized
Reason: Secured Area

3 Bldgs.
Fort Riley
Ft. Riley Co: Riley KS 66442
Landholding Agency: Army
Property Number: 21200310007, 21200540040, 21200740135
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00688
Fort Leavenworth
Leavenworth KS 66027
Landholding Agency: Army
Property Number: 21200820068
Status: Unutilized
Reasons: Extensive deterioration

Kentucky

Bldg. 126
Lexington—Blue Grass Army Depot
Lexington Co: Fayette KY 40511
Landholding Agency: Army
Property Number: 219011661
Status: Unutilized
Reason: Secured Area, Sewage treatment facility

Bldg. 12
Lexington—Blue Grass Army Depot
Lexington Co: Fayette KY 40511–
Landholding Agency: Army
Property Number: 219011663
Status: Unutilized
Reason: Industrial waste treatment plant

43 Bldgs., Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 21200130028–21200130029, 21200440025–21200440026, 21200510007–21200510009, 21200640023, 21200740014, 21200820070
Status: Unutilized
Reason: Extensive deterioration

97 Bldgs., Fort Campbell
Ft. Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Number: 21200110038–21200110043, 21200140053, 21200220029, 21200330018, 21200520012–21200520015, 21200530007, 21200610015, 21200640024–21200640032, 21200720014–21200720025, 21200740139, 21200810010, 21200820069, 21200830013
Status: Unutilized
Reason: Extensive deterioration

8 Bldgs.
Blue Grass Army Depot
Richmond Co: Madison KY 40475
Landholding Agency: Army
Property Number: 21200520011, 21200740136–21200740138, 21200830014
Status: Unutilized
Reason: Secured Area

Louisiana

528 Bldgs.
Louisiana Army Ammunition Plant
Doylin Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219011714–219011716, 219011735–219011737, 219012112, 219013863–219013869, 219110131, 219240138–219240147, 219420332, 219610049–219610263, 219620002–219620200, 219620749–219620801, 219820047–219820078
Status: Unutilized
Reason: Secured Area, (Most are within 2000 ft. of flammable or explosive material), (Some are extensively deteriorated)

215 Bldgs., Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–7100
Landholding Agency: Army
Property Number: 21199920070, 21200130030–21200130043, 21200530008–21200530017, 21200610016–21200610019, 21200620014, 21200640036–21200640048, 21200820002–21200820012, 21200830015–21200830016
Status: Unutilized
Reason: Extensive deterioration, (Some are in Floodway.)

Maryland

110 Bldgs., Aberdeen Proving Ground
Aberdeen City Co: Harford MD 21005–5001
Landholding Agency: Army

Property Number: 219012610, 219012638–219012640, 219012658, 219610489–219610490, 219730077, 219810076–219810112, 219820090, 219820096, 21200120059, 21200120060, 21200410017–21200410032, 21200420098–21200420100, 21200440027, 21200520021, 21200740015, 21200740141–21200740144, 21200810011–21200810018, 21200820134–21200820142
Status: Unutilized
Reason: Most are in a secured area, (Some are within 2000 ft. of flammable or explosive material), (Some are in a floodway), (Some are extensively deteriorated)

63 Bldgs. Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 219810065, 21200140059–21200140060, 21200410014, 21200510018, 21200520020, 21200620015, 21200640049–21200640050, 21200710031, 21200740016
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00211, Curtis Bay Ordnance Depot
Baltimore Co: MD 21226
Landholding Agency: Army
Property Number: 21200320024
Status: Unutilized
Reason: Extensive deterioration

6 Bldgs. Fort Detrick
Frederick Co: MD 21702
Landholding Agency: Army
Property Number: 21200540041, 21200640113, 21200720026, 21200740140, 21200810019
Status: Unutilized
Reason: Secured Area

Bldg. 0001B
Federal Support Center
Olney Co: Montgomery MD 20882
Landholding Agency: Army
Property Number: 21200530018
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material

Michigan

Bldgs. 5755–5756
Newport Weekend Training Site
Carleton Co: Monroe MI 48166
Landholding Agency: Army
Property Number: 219310060–219310061
Status: Unutilized
Reason: Secured Area, Extensive deterioration

54 Bldgs.
Fort Custer Training Center
2501 26th Street
Augusta Co: Kalamazoo MI 49102–9205
Landholding Agency: Army
Property Number: 21200220058–21200220062, 21200410036–21200410042, 21200540048–21200540051
Status: Unutilized
Reason: Extensive deterioration

39 Bldgs.
US Army Garrison-Selfridge
Macomb Co: MI 48045
Landholding Agency: Army
Property Number: 21200420093, 21200510020–21200510023
Status: Unutilized
Reason: Secured Area

4 Bldgs., Poxin USAR Center
Southfield Co: Oakland MI 48034
Landholding Agency: Army
Property Number: 21200330026–21200330027, 21200420095
Status: Unutilized
Reason: Extensive deterioration

20 Bldgs.
Grayling Army Airfield
Grayling Co: Crawford MI 49739
Landholding Agency: Army
Property Number: 21200410034–21200410035, 21200540042–21200540047
Status: Excess
Reason: Extensive deterioration

Bldg. 001, Crabble USARC
Saginaw MI 48601–4099
Landholding Agency: Army
Property Number: 21200420094
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00714
Selfridge Air Natl Guard Base
Macomb Co: MI 48045
Landholding Agency: Army
Property Number: 21200440032
Status: Unutilized
Reason: Extensive deterioration

4 Bldgs.
Detroit Arsenal
T0209, T0216, T0246, T0247
Warren Co: Macomb MI 88397–5000
Landholding Agency: Army
Property Number: 21200520022
Status: Unutilized
Reason: Secured Area

Minnesota

160 Bldgs.
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219120166, 219210014–219210015, 219220227–219220235, 219240328, 219310056, 219320152–219320156, 219330096–219330106, 219340015, 219410159–219410189, 219420198–219420283, 219430060–219430064, 21200130053–21200130054
Status: Unutilized
Reason: Secured Area, (Most are within 2000 ft. of flammable or explosive material), (Some are extensively deteriorated)

Missouri

85 Bldgs., Lake City Army Ammo. Plant
Independence Co: Jackson MO 64050–
Landholding Agency: Army
Property Number: 219013666–219013669, 219530134, 219530136, 21199910023–21199910035, 21199920082, 21200030049, 21200820001
Status: Unutilized
Reason: Secured Area, (Some are within 2000 ft. of flammable or explosive material)

9 Bldgs.
St. Louis Army Ammunition Plant
4800 Goodfellow Blvd.
St. Louis Co: St. Louis MO 63120–1798
Landholding Agency: Army
Property Number: 219120067–219120068, 219610469–219610475
Status: Unutilized
Reason: Secured Area, (Some are extensively deteriorated.)

38 Bldgs., Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219430075, 21199910020–21199910021, 21200320025, 21200330028–21200330031, 21200430029, 21200530019, 21200640051–21200640052, 21200740145–21200740148, 21200830017
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, (Some are extensively deteriorated.)

Bldg. P4122, U.S. Army Reserve Center
St. Louis Co: St. Charles MO 63120–1794
Landholding Agency: Army
Property Number: 21200240055
Status: Unutilized
Reason: Extensive deterioration

Bldgs. P4074, P4072, P4073
St. Louis Ordnance Plant
St. Louis Co: St. Charles MO 63120–1794
Landholding Agency: Army
Property Number: 21200310019
Status: Unutilized
Reason: Extensive deterioration

Montana

5 Bldgs., Fort Harrison
Ft. Harrison Co: Lewis/Clark MT 59636
Landholding Agency: Army
Property Number: 21200420104, 21200740018
Status: Excess
Reasons: Secured Area, Extensive deterioration

Nevada

Bldg. 292
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Landholding Agency: Army
Property Number: 219013614
Status: Unutilized
Reason: Secured Area

39 Bldgs.
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Landholding Agency: Army
Property Number: 219012013, 219013615–219013643
Status: Underutilized
Reason: Secured Area, (Some within airport runway clear zone; many within 2000 ft. of flammable or explosive material)

Group 101, 34 Bldgs.
Hawthorne Army Ammunition Plant
Co: Mineral NV 89415–0015
Landholding Agency: Army
Property Number: 219830132
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

New Jersey

275 Bldgs., Picatinny Arsenal
Dover Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219010444–219010474, 219010639–219010664, 219010680–219010715, 219012428, 219012430, 219012433–219012465, 219012469, 219012475, 219012765, 00219014306, 219014311, 219014317, 219140617, 219230123, 219420006, 219530147, 219540005,219540007, 219740113–

219740127, 21199940094–21199940099, 21200130057–21200130063, 21200220063, 21200230072–21200230075, 21200330047–21200330063, 21200410043–21200410044, 21200520024–21200520039, 21200530022–21200530028, 21200620017–21200620022, 21200630001–21200630019, 21200720028, 21200720102–21200720104, 21200810020, 21200820040–21200820047
Status: Excess
Reason: Secured Area, (Most are within 2000 ft. of flammable or explosive material), (Some are extensively deteriorated and in a floodway)

6 Bldgs., Ft. Monmouth
Ft. Monmouth Co: NJ 07703
Landholding Agency: Army
Property Number: 21200430030, 21200510025–21200510027
Status: Unutilized
Reason: Extensive deterioration

14 Bldgs, Fort Dix
Burlington NJ 08640
Landholding Agency: Army
Property Number: 21200740019, 21200740149, 21200820039
Status: Unutilized
Reasons: Extensive deterioration

New Mexico

188 Bldgs.,White Sands Missile Range
Dona Ana Co: NM 88002
Landholding Agency: Army
Property Number: 21200410045–21200410049, 21200440034–21200440045, 21200620023, 21200810024–21200810029, 21200820048
Status: Excess
Reason: Secured Area

New York

Bldg. 12, Watervliet Arsenal
Watervliet NY
Landholding Agency: Army
Property Number: 219730099
Status: Unutilized
Reason: Extensive deterioration (Secured Area)

13 Bldgs., Youngstown Training Site
Youngstown Co: Niagara NY 14131
Landholding Agency: Army
Property Number: 21200220064–21200220069
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 1716, 3014, 3018 U.S. Military Academy
West Point Co: NY 10996
Landholding Agency: Army
Property Number: 21200330064, 21200410050, 21200520040
Status: Unutilized
Reason: Extensive deterioration

173 Bldgs., Fort Drum
Ft. Drum Co: Jefferson NY 13602
Landholding Agency: Army
Property Number: 21200340028, 21200410051, 21200420112–21200420118, 21200520047, 21200530021, 21200540057–21200540059, 21200720106, 21200820050–21200820052, 21200830048–21200830060
Status: Unutilized
Reason: Extensive deterioration

Bldg. 108, Fredrick J ILL, Jr. USARC
Bullville Co: Orange NY 10915–0277
Landholding Agency: Army
Property Number: 21200510028
Status: Unutilized
Reason: Secured Area

3 Bldgs., Kerry P. Hein USARC NY058
Shoreham Co: Suffolk NY 11778–9999
Landholding Agency: Army
Property Number: 21200510054
Status: Excess
Reason: Secured Area

10 Bldgs., Fort Hamilton
Brooklyn NY 11252
Landholding Agency:
Property Number: 21200740150–21200740153, 21200820071
Status: Underutilized
Reasons: Secured Area

3 Bldgs., U.S. Army Garrison
Orange NY 10996
Landholding Agency: Army
Property Number: 21200810030, 21200820049
Status: Underutilized
Reason: Secured Area

North Carolina

463 Bldgs. Fort Bragg
Ft. Bragg Co: Cumberland NC 28307
Landholding Agency: Army
Property Number: 219640074, 219710102–219710110, 219710224, 219810167, 21200410056, 21200430042, 21200440050–21200440051, 21200530029–21200530047, 21200540060, 21200610020, 21200620024–21200620039, 21200630029–21200630053, 21200640055–21200640060, 21200640114, 21200720029–21200720035, 21200740020–21200740023, 21200740154–21200740159, 21200820053–21200820057, 21200830018–21200830023
Status: Unutilized
Reason: Extensive deterioration

3 Bldgs., Military Ocean Terminal
Southport Co: Brunswick NC 28461–5000
Landholding Agency: Army
Property Number: 219810158–219810160, 21200330032
Status: Unutilized
Reason: Secured Area

North Dakota

5 Bldgs., Stanley R. Mickelsen
Nekoma Co: Cavalier ND 58355
Landholding Agency: Army
Property Number: 21199940103–21199940107
Status: Unutilized
Reason: Extensive deterioration

Ohio

186 Bldgs.
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 21199840069–21199840104, 21200240064, 21200420131–21200420132, 21200530051–21200530052
Status: Unutilized
Reason: Secured Area

7 Bldgs., Lima Army Tank Plant
Lima OH 45804–1898
Landholding Agency: Army
Property Number: 219730104–219730110
Status: Unutilized
Reason: Secured Area

Bldgs. 201, 300, Defense Supply Center
Columbus Co: Franklin OH 43216
Landholding Agency: Army
Property Number: 21200640061, 21200820072
Status: Unutilized
Reasons: Secured Area

Oklahoma

26 Bldgs., Fort Sill
Lawton Co: Comanche OK 73503
Landholding Agency: Army
Property Number: 219510023, 21200330065, 21200430043, 21200530053–21200530060
Status: Unutilized
Reason: Extensive deterioration

Bldgs. MA050, MA070, Regional Training Institute
Oklahoma City Co: OK 73111
Landholding Agency: Army
Property Number: 21200440052
Status: Unutilized
Reason: Extensive deterioration

Bldgs. GRM03, GRM24, GRM26, GRM34
Camp Gruber Training Site
Braggs Co: OK 74423
Landholding Agency: Army
Property Number: 21200510029–21200510032
Status: Unutilized
Reason: Extensive deterioration

38 Bldgs., McAlester Army Ammo Plant
McAlester Co: Pittsburg OK 74501
Landholding Agency: Army
Property Number: 21200510033–21200510039, 21200520048, 21200740024–21200740025, 21200820073, 21200830024
Status: Excess
Reason: Secured Area

Oregon

11 Bldgs.
Tooele Army Depot
Umatilla Depot Activity
Hermiston Co: Morrow/Umatilla OR 97838–
Landholding Agency: Army
Property Number: 219012174–219012176, 219012178–219012179, 219012190–219012191, 219012197–219012198, 219012217, 219012229
Status: Underutilized
Reason: Secured Area

34 Bldgs.
Tooele Army Depot
Umatilla Depot Activity
Hermiston Co: Morrow/Umatilla OR 97838–
Landholding Agency: Army
Property Number: 219012177, 219012185–219012186, 219012189, 219012195–219012196, 219012199–219012205, 219012207–219012208, 219012225, 219012279, 219014304–219014305, 219014782, 219030362–219030363, 219120032, 21199840108–21199840110, 21199920084–21199920090
Status: Unutilized
Reason: Secured Area

Pennsylvania

23 Bldgs., Fort Indiantown Gap
Annville Co: Lebanon PA 17003–5011

Landholding Agency: Army
Property Number: 219810183–219810190
Status: Unutilized
Reason: Extensive deterioration

6 Bldgs., Defense Distribution Depot
New Cumberland Co: York PA 17070–5001
Landholding Agency: Army
Property Number: 21200640063, 21200830026
Status: Unutilized
Reason: Extensive deterioration, Secured Area

13 Bldgs., Tobyhanna Army Depot
Tobyhanna Co: Monroe PA 18466
Landholding Agency: Army
Property Number: 21200330068, 21200820074, 21200830025
Status: Unutilized
Reason: Extensive deterioration

52 Bldgs., Letterkenny Army Depot
Chambersburg Co: Franklin PA 17201
Landholding Agency: Army
Property Number: 21200420134–21200420144, 21200430045–21200430051, 21200630054–21200630063, 21200640062
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

6 Bldgs. Carlisle Barracks
Cumberland Co: PA 17013
Landholding Agency: Army
Property Number: 21200640115, 21200720107, 21200740026
Status: Excess
Reason: Extensive deterioration

Puerto Rico

44 Bldgs., Fort Buchanan
Guaynabo Co: PR 00934
Landholding Agency: Army
Property Number: 21200530061–21200530063, 21200610023, 21200620041, 21200830027
Status: Unutilized
Reason: Secured Area (Some are extensively deteriorated)

Samoa

Bldg. 00002, Army Reserve Center
Pago Pago AQ 96799
Landholding Agency: Army
Property Number: 21200810001
Status: Unutilized
Reason: Floodway, Secured Area

South Carolina

42 Bldgs., Fort Jackson
Ft. Jackson Co: Richland SC 29207
Landholding Agency: Army
Property Number: 219440237, 219440239, 219620312, 219620317, 219620348, 219620351, 219640138–219640139, 21199640148–21199640149, 219720095, 219720097, 219730130, 219730132, 219730145–219730157, 219740138, 219820102–219820111, 219830139–219830157, 21200520050, 21200810031
Status: Unutilized
Reason: Extensive deterioration

South Dakota

Bldgs. 00038, 00039
Lewis & Clark USARC
Bismarck SD 58504
Landholding Agency: Army
Property Number: 21200710033
Status: Unutilized
Reasons: Secured Area

Tennessee

89 Bldgs., Holston Army Ammunition Plant
Kingsport Co: Hawkins TN 61299–6000
Landholding Agency: Army
Property Number: 219012304–219012309, 219012311–219012312, 219012314, 219012316–219012317, 219012328, 219012330, 219012332, 219012334, 219012337, 219013790, 219140613, 219440212–219440216, 219510025–219510027, 21200230035, 21200310040, 21200320054–21200320073, 21200340056, 21200510042, 21200530064–21200530065, 21200640069–21200640072, 21200710035, 21200740160
Status: Unutilized
Reason: Secured Area (Some are within 2000 ft. of flammable or explosive material)

54 Bldgs., Milan Army Ammunition Plant
Milan Co: Gibson TN 38358
Landholding Agency: Army
PropertyNumber: 219240447–219240449, 21200520051–21200520052, 21200640064–21200640068, 21200740027–21200740029
Status: Unutilized
Reason: Secured Area (Some are extensively deteriorated)

Bldg. Z–183A
Milan Army Ammunition Plant
Milan Co: Gibson TN 38358
Landholding Agency: Army
Property Number: 219240783
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

141 Bldgs., Fort Campbell
Ft. Campbell Co: Montgomery TN 42223
Landholding Agency: Army
Property Number: 21200220023, 21200240065, 21200330094–21200330100, 21200430052–2100430054, 21200440057–21200440058, 21200510043, 21200520053–21200520062, 21200540063–21200540069, 21200610024–21200610031, 21200620042–21200620044, 21200620064, 21200710034
Status: Unutilized
Reason: Extensive deterioration

Texas

20 Bldgs., Lone Star Army Ammunition Plant
Highway 82 West
Texarkana Co: Bowie TX 75505–9100
Landholding Agency: Army
Property Number: 219012524, 219012529, 219012533, 219012536, 219012539–219012540, 219012542, 219012544–219012545, 219030337–219030345
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

154 Bldgs., Longhorn Army Ammunition Plant
Karnack Co: Harrison TX 75661
Landholding Agency: Army
Property Number: 219620827, 21200340062–21200340073
Status: Unutilized
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material)

16 Bldgs., Red River Army Depot
Texarkana Co: Bowie TX 75507–5000
Landholding Agency: Army
Property Number: 219420315–219420327, 219430095–219430097
Status: Unutilized
Reason: Secured Area (Some are extensively deteriorated)

178 Bldgs. Fort Bliss
El Paso Co: El Paso TX 79916
Landholding Agency: Army
Property Number: 219730160–219730186, 219830161–219830197, 21200310044, 21200320079, 21200340059, 21200540070–21200540073, 21200640073–21200640075, 21200710036, 21200740030, 21200740161, 21200810032, 21200820013, 21200830030–21200830039
Status: Unutilized
Reason: Extensive deterioration

11 Bldgs., Fort Hood
Ft. Hood Co: Bell TX 76544
Landholding Agency: Army
Property Number: 21200420146, 21200720108–21200720111, 21200810033
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 05110, 06088, Fort Sam Houston
Camp Bullis Co: Bexar TX
Landholding Agency: Army
Property Number: 21200520063
Status: Excess
Reason: Extensive deterioration

Bldg. D5040, Grand Prairie Reserve Complex
Tarrant Co: TX 75051
Landholding Agency: Army
Property Number: 21200620045
Status: Unutilized
Reasons: Secured Area
Extensive deterioration

Bldg. 00002, Denton
Lewisville TX 76102
Landholding Agency: Army
Property Number: 21200810034
Status: Unutilized
Reason: Extensive deterioration

10 Bldgs., Fort Worth
Tarrant TX 76108
Landholding Agency: Army
Property Number: 21200830028–21200830029
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Utah

39 Bldgs.
Tooele Army Depot
Tooele Co: Tooele UT 84074–5008
Landholding Agency: Army
Property Number: 21200620046, 21200640076, 21200710037–21200710041, 21200740162–21200740165
Status: Unutilized
Reason: Secured Area

Bldg. 9307
Dugway Proving Ground
Dugway Co: Toole UT 84022
Landholding Agency: Army
Property Number: 219013997
Status: Underutilized
Reason: Secured Area

15 Bldgs.
Deseret Chemical Depot
Tooele UT 84074
Landholding Agency: Army

Property Number: 219820120–219820121, 21200610032–21200610034, 21200620047, 21200720036–21200720037, 21200820075
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldgs. 00259, 00206
Ogden Maintenance Center
Weber Co: UT 84404
Landholding Agency: Army
Property Number: 21200530066
Status: Excess
Reason: Secured Area

Virginia

363 Bldgs.
Radford Army Ammunition Plant
Radford Co: Montgomery VA 24141
Landholding Agency: Army
Property Number: 219010833, 219010836, 219010842, 219010844, 219010847–219010890, 219010892–219010912, 219011521–219011577, 219011581–219011583, 219011585, 219011588, 219011591, 219013559–219013570, 219110142–219110143, 219120071, 219140618–219140633, 219220210–219220218, 219230100–219230103, 219240324, 219440219–219440225, 219510032–219510033, 219520037, 219520052, 219530194, 219610607–219610608, 219830223–219830267, 21200020079–21200020081, 21200230038, 21200240071–21200240072, 21200510045–21200510046, 21200740031–21200740032, 21200740169–21200740171
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, (Some are extensively deteriorated)

13 Bldgs., Radford Army Ammunition Plant
Radford Co: Montgomery VA 24141
Landholding Agency: Army
Property Number: 219010834–219010835, 219010837–219010838, 219010840–219010841, 219010843, 219010845–219010846, 219010891, 219011578–219011580
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Latrine, detached structure

100 Bldgs.
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801
Landholding Agency: Army
Property Number: 219240107, 219620866–219620876, 219740156, 219830208–219830210, 21199940130, 21200430059–21200430060, 21200620048, 21200630064, 21200640077–21200640080, 21200710042, 21200740033–21200740035, 21200740166, 21200810039–21200810040, 21200820017, 21200820021, 21200830042
Status: Unutilized
Reason: Extensive deterioration (Some are in a secured area)

56 Bldgs.
Red Water Field Office
Radford Army Ammunition Plant
Radford VA 24141
Landholding Agency: Army
Property Number: 219430341–219430396
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

125 Bldgs., Fort A.P. Hill
Bowling Green Co: Caroline VA 22427
Landholding Agency: Army
Property Number: 21200310058, 21200310060, 21200410069–21200410076, 21200430057, 21200510051, 21200740167, 21200810038, 21200820029–21200820032, 21200830041
Status: Unutilized
Reason: Secured Area, Extensive deterioration

65 Bldgs., Fort Belvoir
Ft. Belvoir Co: Fairfax VA 22060–5116
Landholding Agency: Army
Property Number: 21200130076–21200130077, 21200710043–21200710049, 21200720043–21200720051, 21200810042–21200810043
Status: Unutilized
Reason: Extensive deterioration

91 Bldgs., Fort Eustis
Ft. Eustis Co. VA 23604
Landholding Agency: Army
Property Number: 21200210025–21200210026, 21200740037, 21200740168, 21200810035, 21200820022–21200820028, 21200830043
Status: Unutilized
Reason: Extensive deterioration

59 Bldgs., Fort Pickett
Blackstone Co: Nottoway VA 23824
Landholding Agency: Army
Property Number: 21200220087–21200220092, 21200320080–21200320085, 21200620049–21200620052, 21200720042, 21200820015
Status: Unutilized
Reason: Extensive deterioration

9 Bldgs., Fort Story
Ft. Story Co: Princess Ann VA 23459
Landholding Agency: Army
Property Number: 21200310046, 21200810037, 21200820016, 21200830040
Status: Unutilized
Reason: Extensive deterioration

13 Bldgs., Defense Supply Center
Richmond VA 23297
Landholding Agency: Army
Property Number: 21200720038–21200720040, 21200720112, 21200740036

7 Bldgs., Fort Myer
Ft. Myer VA 22211
Landholding Agency: Army
Property Number: 21200810036, 21200820014, 21200830044
Status: Excess
Reason: Secured Area

Washington

695 Bldgs., Fort Lewis
Ft. Lewis Co: Pierce WA 98433–5000
Landholding Agency: Army
Property Number: 219610006, 219610009–219610010, 219610045–219610046, 219620512–219620517, 219640193, 219720142–219720151, 219810205–219810242, 219820132, 21199910064–21199910078, 21199920125–21199920174, 21199930080–21199930104, 21199940134, 21200120068, 21200140072–21200140073, 21200210075, 21200220097, 21200330104–21200330106, 21200430061, 21200620053–21200620059, 21200630067–21200630069, 21200640087–21200640090, 21200740172, 21200820076
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. HBC07, Fort Lewis
Huckleberry Creek Mountain Training Site
Co: Pierce WA
Landholding Agency: Army
Property Number: 219740166
Status: Unutilized
Reason: Extensive deterioration

Bldg. 415, Fort Worden
Port Angeles Co: Clallam WA 98362
Landholding Agency: Army
Property Number: 21199910062
Status: Excess
Reason: Extensive deterioration

Bldg. U515A, Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920124
Status: Excess
Reason: Gas chamber

Bldgs. 02401, 02402
Vancouver Barracks Cemetery
Vancouver Co: WA 98661
Landholding Agency: Army
Property Number: 21200310048
Status: Unutilized
Reason: Extensive deterioration

4 Bldgs. Renton USARC
Renton Co: WA 980058
Landholding Agency: Army
Property Number: 21200310049
Status: Unutilized
Reason: Extensive deterioration

Wisconsin

5 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913-
Landholding Agency: Army
Property Number: 219011209–219011210, 219011217
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Friable asbestos, Secured Area

153 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219011104, 219011106, 219011108–219011113, 219011115–219011117, 219011119–219011120, 219011122–219011139, 219011141–219011142, 219011144, 219011148–219011208, 219011213–219011216, 219011218–219011234, 219011236, 219011238, 219011240, 219011242, 219011244, 219011247, 219011249, 219011251, 219011256, 219011259, 219011263, 219011265, 219011268, 219011270, 219011275, 219011277, 219011280, 219011282, 219011284, 219011286, 219011290, 219011293, 219011295, 219011297, 219011300, 219011302, 219011304–219011311, 219011317, 219011319–219011321, 219011323
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Friable asbestos, Secured Area

4 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI
Landholding Agency: Army
Property Number: 219013871–219013873, 219013875
Status: Underutilized
Reason: Secured Area

906 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI
Landholding Agency: Army
Property Number: 219013876–219013878, 219210097–219210099, 219220295–219220311, 219510065, 219510067, 219510069–219510077, 219740184–219740271, 21200020083–21200020155, 21200240074–21200240080
Status: Unutilized
Reason: (Most are in a secured area), (Most are within 2000 ft. of flammable or explosive material), (Some are extensively deteriorated)

9 Bldgs. Fort McCoy
Monroe WI 54656
Landholding Agency: Army
Property Number: 21200830045–21200830046
Status: Unutilized
Reason: Extensive deterioration

*Land (by State)*

Indiana

Newport Army Ammunition Plant
East of 14th St. & North of S. Blvd.
Newport Co: Vermillion IN 47966–
Landholding Agency: Army
Property Number: 219012360
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Maryland

Approx. 1 acre
Fort Meade
Anne Arundel MD 20755
Landholding Agency: Army
Property Number: 21200740017
Status: Unutilized
Reasons:
Other—no public access

RNWYA, Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820143
Status: Unutilized
Reason: Within airport runway clear zone

Minnesota

Portion of R.R. Spur
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112
Landholding Agency: Army
Property Number: 219620472
Status: Unutilized
Reason: Landlocked

New Jersey

Land
Armament Research Development & Eng. Center
Route 15 North
Picatinny Arsenal Co: Morris NJ 07806–
Landholding Agency: Army
Property Number: 219013788
Status: Unutilized
Reason: Secured Area

Spur Line/Right of Way
Armament Rsch., Dev., & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219530143
Status: Unutilized
Reason: Floodway

2.0 Acres, Berkshire Trail
Armament Rsch., Dev., & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910036
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Texas

Land—Approx. 50 acres
Lone Star Army Ammunition Plant
Texarkana Co: Bowie TX 75505–9100
Landholding Agency: Army
Property Number: 219420308
Status: Unutilized
Reason: Secured Area

[FR Doc. E8–19741 Filed 8–28–08; 8:45 am]

**BILLING CODE 4210–67–P**

Federal Register

Friday,
August 29, 2008

# Part III

# Department of the Interior

## Fish and Wildlife Service

**50 CFR Part 20**

**Migratory Bird Hunting; Early Seasons and Bag and Possession Limits for Certain Migratory Game Birds in the Contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands; Final Rule; Proposed Frameworks for Late–Season Migratory Bird Hunting Regulations; Proposed Rule**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 20**

**[FWS–R9–MB–2008–0032; 91200–1231–9BPP–L2]**

**RIN 1018–AV62**

# Migratory Bird Hunting; Early Seasons and Bag and Possession Limits for Certain Migratory Game Birds in the Contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** This rule prescribes the hunting seasons, hours, areas, and daily bag and possession limits of mourning, white-winged, and white-tipped doves; band-tailed pigeons; rails; moorhens and gallinules; woodcock; common snipe; sandhill cranes; sea ducks; early (September) waterfowl seasons; migratory game birds in Alaska, Hawaii, Puerto Rico, and the Virgin Islands; and some extended falconry seasons. Taking of migratory birds is prohibited unless specifically provided for by annual regulations. This rule permits taking of designated species during the 2008–09 season.

**DATES:** This rule is effective on September 1, 2008.

**ADDRESSES:** You may inspect comments received on the migratory bird hunting regulations during normal business hours at the Service's office in room 4107, Arlington Square Building, 4501 N. Fairfax Drive, Arlington, Virginia. You may obtain copies of referenced reports from the address above or from the Division of Migratory Bird Management's Web site at *http://www.fws.gov/migratorybirds/reports/reports.html*.

**FOR FURTHER INFORMATION CONTACT:** Robert Blohm, Chief, or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

**SUPPLEMENTARY INFORMATION:**

## Regulations Schedule for 2008

On May 28, 2008, we published in the **Federal Register** (73 FR 30712) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and dealt with the establishment of seasons, limits, and other regulations for hunting migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. Major steps in the 2008–09 regulatory cycle relating to open public meetings and **Federal Register** notifications were also identified in the May 28 proposed rule.

Subsequent documents will refer only to numbered items requiring attention. Therefore, it is important to note that we will omit those items requiring no attention, and remaining numbered items will be discontinuous and appear incomplete.

On June 18, 2008, we published in the **Federal Register** (73 FR 34692) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations. The June 18 supplement also provided detailed information on the 2008–09 regulatory schedule and announced the SRC and Flyway Council meetings.

On June 25 and 26, 2008, we held open meetings with the Flyway Council Consultants at which the participants reviewed information on the current status of migratory shore and upland game birds and developed recommendations for the 2008–09 regulations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands, special September waterfowl seasons in designated States, special sea duck seasons in the Atlantic Flyway, and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 2008–09 regular waterfowl seasons. On July 24, 2008, we published in the **Federal Register** (73 FR 43290) a third document specifically dealing with the proposed frameworks for early-season regulations. On August 27, 2008, we published a fourth document in the **Federal Register** which contained final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected early-season hunting dates, hours, areas, and limits.

On July 30–31, 2008, we held open meetings with the Flyway Council Consultants at which the participants reviewed the status of waterfowl and developed recommendations for the 2008–09 regulations for these species. Proposed hunting regulations were discussed for late seasons. We will publish proposed frameworks for the 2008–09 late-season migratory bird hunting regulations in a late August 2008 **Federal Register**.

The final rule described here is the sixth in the series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations and deals specifically with amending subpart K of 50 CFR part 20. It sets hunting seasons, hours, areas, and limits for mourning, white-winged, and white-tipped doves; band-tailed pigeons; rails; moorhens and gallinules; woodcock; common snipe; sandhill cranes; sea ducks; early (September) waterfowl seasons; mourning doves in Hawaii; migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; youth waterfowl hunting day; and some extended falconry seasons.

## National Environmental Protection Act (NEPA) Consideration

NEPA considerations are covered by the programmatic document ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with the Environmental Protection Agency on June 9, 1988. We published Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment entitled ''Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands'' is available from the address indicated under the caption **FOR FURTHER INFORMATION CONTACT**.

In a notice published in the September 8, 2005, **Federal Register** (70 FR 53376), we announced our intent to develop a new Supplemental Environmental Impact Statement for the migratory bird hunting program. Public scoping meetings were held in the spring of 2006, as detailed in a March 9, 2006, **Federal Register** (71 FR 12216). We have prepared a scoping report summarizing the scoping comments and scoping meetings. The report is available by either writing to the address indicated under **FOR FURTHER INFORMATION CONTACT** or by viewing on our Web site at *http://www.fws.gov/migratorybirds*.

## Endangered Species Act Consideration

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, ''The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act'' (and) shall ''insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in

the destruction or adverse modification of [critical] habitat. * * *.'' Consequently, we conducted formal consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion, which concluded that the regulations are not likely to adversely affect any endangered or threatened species. Additionally, these findings may have caused modification of some regulatory measures previously proposed, and the final frameworks reflect any such modifications. Our biological opinions resulting from this Section 7 consultation are public documents available for public inspection at the address indicated under **ADDRESSES**.

**Executive Order 12866**

The Office of Management and Budget has determined that this rule is significant and has reviewed this rule under Executive Order 12866. OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

**Regulatory Flexibility Act**

The regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis discussed under Executive Order 12866. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, 2004, and 2008. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2008 Analysis was based on the 2006 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend approximately $1.2 billion at small businesses in 2008. Copies of the Analysis are available upon request from the address indicated under **FOR FURTHER INFORMATION CONTACT** or from our Web site at *http://www.fws.gov/migratorybirds/reports/reports.html* or at *http://www.regulations.gov*.

**Small Business Regulatory Enforcement Fairness Act**

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

**Paperwork Reduction Act**

We examined these regulations under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of our Migratory Bird Surveys and assigned control number 1018–0023 (expires 2/28/2011). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Alaska Subsistence Household Survey, an associated voluntary annual household survey used to determine levels of subsistence take in Alaska, and assigned control number 1018–0124 (expires 1/31/2010). A Federal 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.

**Unfunded Mandates Reform Act**

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

**Civil Justice Reform—Executive Order 12988**

In promulgating this rule, we have determined that it will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

**Takings Implication Assessment**

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

**Energy Effects—Executive Order 13211**

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

**Government-to-Government Relationship With Tribes**

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. Thus, in accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, in the April 11 proposed rule we solicited proposals for special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2008–09 migratory bird hunting season. The resulting proposals will be contained in a separate proposed rule. By virtue of these actions, we have

consulted with all the Tribes affected by this rule.

**Federalism Effects**

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or tribe may be more restrictive than the Federal frameworks. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Regulations Promulgation**

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, States would have insufficient time to select season dates and limits, to communicate those selections to us, and to establish and publicize the necessary regulations and procedures to implement their decisions. We therefore find that ''good cause'' exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these regulations will, therefore, take effect immediately upon publication. Accordingly, with each conservation agency having had an opportunity to participate in selecting the hunting seasons desired for its State or Territory on those species of migratory birds for which open seasons are now prescribed, and consideration having been given to all other relevant matters presented, certain sections of title 50, chapter I, subchapter B, part 20, subpart K, are hereby amended as set forth below.

**List of Subjects in 50 CFR Part 20**

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Dated: August 25, 2008.

**David M. Verhey,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

■ For the reasons set out in the preamble, title 50, chapter I, subchapter B, part 20, subpart K of the Code of Federal Regulations is amended as follows:

## PART 20—[AMENDED]

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

**Authority:** 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j, Public Law 106–108.

BILLING CODE 4310–55–P

**-Note - The following annual hunting regulations provided for by §§20.101 through 20.106 and 20.109 of 50 CFR 20 will not appear in the Code of Federal Regulations because of their seasonal nature.**

2. Section 20.101 is revised to read as follows:

**§20.101 Seasons, limits, and shooting hours for Puerto Rico and the Virgin Islands.**

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset.

CHECK COMMONWEALTH REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

(a) Puerto Rico

| | Season Dates | Limits Bag | Limits Possession |
|---|---|---|---|
| Doves and Pigeons | | | |
| Zenaida, white-winged, and mourning doves (1) | Sept. 6-Nov. 3 | 15 | 15 |
| Scaly-naped pigeons | Sept. 6-Nov. 3 | 5 | 5 |
| Ducks | Nov. 15-Dec. 22 & | 6 | 12 |
| | Jan. 10-Jan. 26 | 6 | 12 |
| Common Moorhens | Nov. 15-Dec. 22 & | 6 | 12 |
| | Jan. 10-Jan. 26 | 6 | 12 |
| Common Snipe | Nov. 15-Dec. 22 & | 8 | 16 |
| | Jan. 10-Jan. 26 | 8 | 16 |

(1) Not more than 3 may be mourning doves.

**Restrictions:** In Puerto Rico, the season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, masked duck, purple gallinule, American coot, and Caribbean coot, white-crowned pigeon and plain pigeon.

**Closed Areas:** Closed areas are described in the July 24, 2008, Federal Register (73 FR 43290).

(b) Virgin Islands

| | Season Dates | Limits Bag | Limits Possession |
|---|---|---|---|
| Zenaida doves | Sept. 1-Sept. 30 | 10 | 10 |
| Ducks | CLOSED | | |

**Restrictions:** In the Virgin Islands, the seasons are closed for ground or quail doves, pigeons, ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, masked duck, and purple gallinule.

**Closed Areas:** Ruth Cay, just south of St. Croix, is closed to the hunting of migratory game birds.

3. Section 20.102 is revised to read as follows:

**§20.102 Seasons, limits, and shooting hours for Alaska.**

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset. Area descriptions were published in the July 24, 2008, Federal Register (73 FR 43290).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

| Area Seasons | Dates |
|---|---|
| North Zone | Sept. 1-Dec. 16 |
| Gulf Coast Zone | Sept. 1-Dec. 16 |
| Southeast Zone | Sept. 1-Dec. 16 |
| Pribilof & Aleutian Islands Zone | Oct. 8-Jan. 22 |
| Kodiak Zone | Oct. 8-Jan. 22 |

Daily Bag and Possession Limits

| Area | Ducks (1) | Dark Geese (2)(3)(4) | Light Geese (2) | Brant(2) | Common Snipe | Sandhill Cranes (5) |
|---|---|---|---|---|---|---|
| North Zone | 10-30 | 4-8 | 4-8 | 3-6 | 8-16 | 3-6 |
| Gulf Coast Zone | 8-24 | 4-8 | 4-8 | 3-6 | 8-16 | 2-4 |
| Southeast Zone | 7-21 | 4-8 | 4-8 | 3-6 | 8-16 | 2-4 |
| Pribilof and Aleutian Islands Zone | 7-21 | 4-8 | 4-8 | 3-6 | 8-16 | 2-4 |
| Kodiak Zone | 7-21 | 4-8 | 4-8 | 3-6 | 8-16 | 2-4 |

(1) The basic duck bag limits may include no more than 1 canvasback daily, 3 in possession, and may not include sea ducks. In addition to the basic duck limits, sea duck limits of 10 daily, 20 in possession, singly or in the aggregate, including no more than 6 each of either harlequin or long-tailed ducks, are allowed. Special sea duck limits will be available to non-residents, but at lower daily limits than residents, and they may take no more than a possession limit of 20 per season, including no more than 4 each of harlequin and long-tailed ducks, black, surf, and white-winged scoters, and king and common eiders. Sea ducks include scoters, common and king eiders, harlequin ducks, long-tailed ducks, and common and red-breasted mergansers. The season for Steller's and spectacled eiders is closed.

(2) Dark geese include Canada and white-fronted geese. Light geese include snow geese and Ross' geese. Separate limits apply to brant. The season for emperor geese is closed Statewide.

(3) In Units 5 and 6, the taking of Canada geese is only permitted from September 28 through December 16. In the Middleton Island portion of Unit 6, the taking of Canada geese is by special permit only, with a maximum of 10 permits for the season and a daily bag and possession limit of 1. The season shall close if incidental harvest includes 5 dusky Canada geese.

(4) In Units 9, 10, 17, and 18, dark goose limits are 6 per day, 12 in possession; however, no more than 2 may be Canada geese in Units 9(E) and 18; and no more than 4 may be Canada geese in Units 9(A–C), 10 (Unimak Island portion), and 17.

(5) In Unit 17, the daily bag limit for sandhill cranes is 2 and the possession limit is 4.

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**Falconry:** The total combined bag and possession limit for migratory game birds taken with the use of a falcon under a falconry permit is 3 per day, 6 in possession, and may not exceed a more restrictive limit for any species listed in this subsection.

**Special Tundra Swan Season:** In Units 17, 18, 22, and 23, there will be a tundra swan season from September 1 through October 31 with a season limit of 3 tundra swans per hunter. This season is by registration permit only; hunters will be issued 1 permit allowing the take of up to 3 tundra swans. Hunters will be required to file a harvest report after the season is completed. Up to 500 permits may be issued in Unit 18, 300 permits each in Units 22 and 23, and 200 permits in Unit 17.

4. Section 20.103 is revised to read as follows:

**§20.103 Seasons, limits, and shooting hours for doves and pigeons.**

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset except as otherwise noted. Area descriptions were published in the July 24, 2008, Federal Register (73 FR 43290).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

(a) Doves

Note: Unless otherwise specified, the seasons listed below are for mourning doves only.

| | Season Dates | Limits Bag | Possession |
|---|---|---|---|
| EASTERN MANAGEMENT UNIT | | | |
| Alabama (1) | | | |
| North Zone | | | |
| 12 noon to sunset | Sept. 6 only | 15 | 15 |
| ½ hour before sunrise to sunset | Sept. 7-Oct. 5 & | 15 | 15 |
| | Oct. 25-Nov. 15 & | 15 | 15 |
| | Dec. 13-Dec. 30 | 15 | 15 |
| South Zone | | | |
| 12 noon to sunset | Oct. 4 only | 15 | 15 |
| ½ hour before sunrise to sunset | Oct. 5-Nov. 2 & | 15 | 15 |
| | Nov. 27-Nov. 30 & | 15 | 15 |
| | Dec. 6-Jan. 10 | 15 | 15 |
| Delaware | Sept. 1-Sept. 27 & | 15 | 30 |
| | Oct. 20-Nov. 1 & | 15 | 30 |
| | Dec. 12-Jan. 10 | 15 | 30 |
| Florida (1) | | | |
| 12 noon to sunset | Oct. 4-Oct. 27 | 15 | 30 |
| ½ hour before sunrise to sunset | Nov. 15-Nov. 30 & | 15 | 30 |
| | Dec. 13-Jan. 11 | 15 | 30 |
| Georgia | | | |
| 12 noon to sunset | Sept. 6 only | 15 | 30 |
| ½ hour before sunrise to sunset | Sept. 7-Sept. 21 | 15 | 30 |
| | Oct. 11-Oct. 19 & | 15 | 30 |
| | Nov. 27-Jan. 10 | 15 | 30 |
| Illinois (2) | Sept. 1-Oct. 24 & | 15 | 30 |
| | Nov. 1-Nov. 16 | 15 | 30 |
| Indiana | Sept. 1-Oct. 16 & | 15 | 30 |
| | Nov. 7-Nov. 30 | 15 | 30 |
| Kentucky (1) | | | |
| 11 a.m. to sunset | Sept. 1 only | 15 | 30 |
| ½ hour before sunrise to sunset | Sept. 2-Oct. 24 & | 15 | 30 |
| | Nov. 27-Dec. 5 & | 15 | 30 |
| | Dec. 27-Jan. 2 | 15 | 30 |
| Louisiana (1) | | | |
| North Zone | | | |
| 12 noon to sunset | Sept. 6 only | 15 | 30 |
| ½ hour before sunrise to sunset | Sept. 7-Sept. 21 & | 15 | 30 |
| | Oct. 11-Nov. 9 & | 15 | 30 |
| | Dec. 13-Jan. 5 | 15 | 30 |

| | Season Dates | Limits Bag | Limits Possession |
|---|---|---|---|
| Louisiana (cont.) | | | |
| South Zone | | | |
| 12 noon to sunset | Sept. 6 only | 15 | 30 |
| ½ hour before sunrise to sunset | Sept. 7-Sept. 14 & | 15 | 30 |
| | Oct. 18-Nov. 30 & | 15 | 30 |
| | Dec. 20-Jan. 5 | 15 | 30 |
| Maryland | | | |
| 12 noon to sunset | Sept. 1-Oct. 11 | 12 | 24 |
| ½ hour before sunrise to sunset | Nov. 15-Nov. 28 & | 12 | 24 |
| | Dec. 20-Jan. 3 | 12 | 24 |
| Mississippi (1) | | | |
| North Zone | Sept. 1-Sept. 21 & | 15 | 30 |
| | Oct. 3-Nov. 9 & | 15 | 30 |
| | Jan. 1-Jan. 11 | 15 | 30 |
| South Zone | Sept. 1-Sept. 14 & | 15 | 30 |
| | Oct. 11-Oct. 26 & | 15 | 30 |
| | Dec. 7-Jan. 15 | 15 | 30 |
| North Carolina | | | |
| 12 noon to sunset | Sept. 1 | 15 | 30 |
| ½ hour before sunrise to sunset | Sept. 2-Oct. 4 & | 15 | 30 |
| | Nov. 24-Nov. 29 & | 15 | 30 |
| | Dec. 12-Jan. 10 | 15 | 30 |
| Ohio | Sept. 1-Oct. 22 & | 15 | 30 |
| | Dec. 9-Dec. 26 | 15 | 30 |
| Pennsylvania | | | |
| 12 noon to sunset | Sept. 1-Sept. 27 & | 15 | 30 |
| ½ hour before sunrise to sunset | Oct. 25-Nov. 29 & | 15 | 30 |
| | Dec. 26-Jan. 1 | 15 | 30 |
| Rhode Island | | | |
| 12 noon to sunset | Sept. 20-Oct. 5 | 12 | 24 |
| ½ hour before sunrise to sunset | Oct. 18-Nov. 16 & | 12 | 24 |
| | Dec. 24-Jan. 8 | 12 | 24 |
| South Carolina | | | |
| 12 noon to sunset | Sept. 1-Sept. 6 | 15 | 30 |
| ½ hour before sunrise to sunset | Sept. 7-Oct.4 & | 15 | 30 |
| | Nov. 22-Nov. 29 & | 15 | 30 |
| | Dec. 19-Jan. 15 | 15 | 30 |

| | Season Dates | Limits Bag | Limits Possession |
|---|---|---|---|
| Tennessee | | | |
| 12 noon to sunset | Sept. 1 only | 15 | 30 |
| ½ hour before sunrise to sunset | Sept. 2-Sept. 26 & | 15 | 30 |
| | Oct. 11-Oct. 26 & | 15 | 30 |
| | Dec. 19-Jan. 15 | 15 | 30 |
| Virginia | | | |
| 12 noon to sunset | Sept. 1-Sept. 27 | 15 | 30 |
| ½ hour before sunrise to sunset | Oct. 4-Oct. 31 & | 15 | 30 |
| | Dec. 27-Jan. 10 | 15 | 30 |
| West Virginia | | | |
| 12 noon to sunset | Sept. 1 only | 15 | 30 |
| ½ hour before sunrise to sunset | Sept. 2-Oct. 4 & | 15 | 30 |
| | Oct. 20-Nov. 8 & | 15 | 30 |
| | Dec. 19-Jan. 3 | 15 | 30 |
| Wisconsin | Sept. 1-Nov. 9 | 15 | 30 |
| CENTRAL MANAGEMENT UNIT | | | |
| Arkansas | Sept. 6-Sept. 28 & | 15 | 30 |
| | Oct. 4-Oct. 19 & | 15 | 30 |
| | Dec. 13-Jan. 2 | 15 | 30 |
| Colorado (1) | Sept. 1-Oct. 30 | 15 | 30 |
| Kansas (1) | Sept. 1-Oct. 14 & | 15 | 30 |
| | Nov. 1-Nov. 16 | 15 | 30 |
| Minnesota | Sept. 1-Oct. 30 | 15 | 30 |
| Missouri (1) | Sept. 1-Nov. 9 | 12 | 24 |
| Montana | Sept. 1-Oct. 30 | 15 | 30 |
| Nebraska (1) | Sept. 1-Oct. 30 | 15 | 30 |
| New Mexico (1) | | | |
| North Zone | Sept. 1-Oct. 30 | 15 | 30 |
| South Zone | Sept. 1-Sept. 30 & | 15 | 30 |
| | Dec. 1-Dec. 30 | 15 | 30 |
| North Dakota | Sept. 1-Oct. 30 | 15 | 30 |

| | Season Dates | Limits Bag | Limits Possession |
|---|---|---|---|
| Oklahoma (1) | | | |
| North Zone | Sept. 1-Oct. 30 | 15 | 30 |
| Southwest Zone | Sept. 1-Oct. 30 & | 12 | 24 |
| | Dec. 27-Jan. 5 | 12 | 24 |
| South Dakota | Sept. 1-Oct. 30 | 15 | 30 |
| Texas (3) | | | |
| North Zone | Sept. 1-Oct. 30 | 15 | 30 |
| Central Zone | Sept. 1-Oct. 30 & | 12 | 24 |
| | Dec. 26-Jan. 4 | 12 | 24 |
| South Zone | | | |
| Special Area | Sept. 20-Nov. 9 & | 12 | 24 |
| | Dec. 26-Jan. 9 | 12 | 24 |
| (Special Season) | | | |
| 12 noon to sunset | Sept. 6-Sept. 7 & | 12 | 24 |
| | Sept. 13-Sept. 14 | 12 | 24 |
| Remainder of the | | | |
| South Zone | Sept. 20-Nov. 9 & | 12 | 24 |
| | Dec. 26-Jan. 13 | 12 | 24 |
| Wyoming | Sept. 1-Oct. 30 | 15 | 30 |
| WESTERN MANAGEMENT UNIT | | | |
| Arizona (4) | Sept. 1-Sept. 15 & | 10 | 20 |
| | Nov. 21-Jan. 4 | 10 | 20 |
| California (5) | Sept. 1-Sept. 15 & | 10 | 20 |
| | Nov. 8-Dec. 22 | 10 | 20 |
| Idaho | Sept. 1-Sept. 30 | 10 | 20 |
| Nevada (5) | Sept. 1-Sept. 30 | 10 | 20 |
| Oregon | Sept. 1-Sept. 30 | 10 | 20 |
| Utah (5) | Sept. 1-Sept. 30 | 10 | 20 |
| Washington | Sept. 1-Sept. 30 | 10 | 20 |
| OTHER POPULATIONS | | | |
| Hawaii (6) | Nov. 1-Nov. 23 & | 10 | 10 |
| | Dec. 6-Dec. 28 & | 10 | 10 |
| | Jan. 3-Jan. 19 | 10 | 10 |

(1) The daily bag limit is for mourning and white-winged doves in the aggregate.

(2) In Illinois, shooting hours are sunrise to sunset.

(3) In Texas, the daily bag limit is either 15 mourning, white-winged, and white-tipped doves in the aggregate, of which no more than 2 may be white-tipped doves with a maximum 60-day season or 12 mourning, white-winged, and white-tipped doves in the aggregate, of which no more than 2 may be white-tipped doves with a maximum 70-day season. Possession limits are twice the daily bag limit. During the special season in the Special White-winged Dove Area of the South Zone, the daily bag limit is 12 mourning, white-winged, and white-tipped doves in the aggregate, of which no more than 4 may be mourning doves and 2 may be white-tipped doves. Possession limits are twice the daily bag limit.

(4) In Arizona, during September 1 through 15, the daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-wing doves. During November 21 through January 4, the daily bag limit is 10 mourning doves. The possession limit is twice the daily bag limit. See State regulations for restrictive shooting hours in certain areas.

(5) In Utah and the areas of California and Nevada open to white-winged dove hunting, the daily bag limit is 10 and the possession limit is 20 mourning and white-winged doves in the aggregate.

(6) In Hawaii, the season is only open on the island of Hawaii. The daily bag and possession limits are 10 mourning doves, spotted doves and chestnut-bellied sandgrouse in the aggregate. Shooting hours are from one-half hour before sunrise through one-half hour after sunset. Hunting is permitted only on weekends and State holidays.

(b) Band-tailed Pigeons

| | Season Dates | Limits | |
|---|---|---|---|
| | | Bag | Possession |
| Arizona (1) | Sept. 12-Oct. 5 | 5 | 10 |
| California | | | |
| North Zone | Sept. 20-Sept. 28 | 2 | 4 |
| South Zone | Dec. 20-Dec. 28 | 2 | 4 |
| Colorado | Sept. 1-Sept. 30 | 5 | 10 |
| New Mexico (2) | | | |
| North Zone | Sept. 1-Sept. 20 | 5 | 10 |
| South Zone | Oct. 1-Oct. 20 | 5 | 10 |
| Oregon | Sept. 15-Sept. 23 | 2 | 4 |
| Utah (3) | Sept. 1-Sept. 30 | 5 | 10 |
| Washington | Sept. 15-Sept. 23 | 2 | 4 |

(1) See State regulations for additional information and restrictions.

(2) In New Mexico, each band-tailed pigeon hunter must have a band-tailed pigeon hunting permit issued by the State.

(3) In Utah, each band-tailed pigeon hunter must have either a band-tailed pigeon hunting permit or a special bird permit stamp issued by the respective State.

5. Section 20.104 is revised to read as follows:

**§20.104 Seasons, limits, and shooting hours for rails, woodcock, and common snipe.**

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset except as otherwise noted. Area descriptions were published in the July 24, 2008, Federal Register (73 FR 43290).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Note: States with deferred seasons may select those seasons at the same time they select waterfowl seasons in August. Consult late-season regulations for further information.

| | Sora and Virginia Rails | Clapper and King Rails | Woodcock | Common Snipe |
|---|---|---|---|---|
| Daily bag limit | 25 (1) | 15 (2) | 3 | 8 |
| Possession limit | 25 (1) | 30 (2) | 6 | 16 |
| ATLANTIC FLYWAY | | | | |
| Connecticut (3) | Sept. 2-Nov. 8 | Sept. 2-Nov. 8 | Oct. 29-Nov. 27 | Oct. 29-Nov. 27 |
| Delaware | Sept. 5-Nov. 13 | Sept. 5-Nov. 13 | Nov. 24-Dec. 13 & Dec. 23-Jan. 1 | Nov. 24-Dec.13 & Dec. 23-Jan. 1 |
| Florida | Sept. 1-Nov. 9 | Sept. 1-Nov. 9 | Dec. 20-Jan. 18 | Nov. 1-Feb. 15 |
| Georgia | Sept. 15-Oct. 20 & Nov. 11-Dec. 14 | Sept. 15-Oct. 20 & Nov. 11-Dec. 14 | Dec. 20-Jan. 18 | Nov. 15-Feb. 28 |
| Maine | Sept. 2-Nov. 10 | Closed | Oct. 1-Oct. 25 & Oct. 27-Oct. 31 | Sept. 2-Dec. 17 |
| Maryland (4) | Sept. 1-Nov. 8 | Sept. 1-Nov. 8 | Nov. 8-Nov. 28 & Jan. 16-Jan. 24 | Sept. 24-Nov. 28 & Dec. 15-Jan. 24 |
| Massachusetts (5) | Sept. 1-Nov. 8 | Closed | Deferred | Sept. 1-Dec. 16 |
| New Hampshire | Closed | Closed | Oct. 6-Nov. 4 | Sept. 15-Nov. 4 |
| New Jersey (6) | | | | |
| North Zone | Sept. 1-Nov. 8 | Sept. 1-Nov. 8 | Oct. 16-Nov. 8 | Sept. 19-Jan. 3 |
| South Zone | Sept. 1-Nov. 8 | Sept. 1-Nov. 8 | Nov. 8-Nov. 22 & Dec. 26-Jan. 3 | Sept. 19-Jan. 3 |

| | Sora and Virginia Rails | Clapper and King Rails | Woodcock | Common Snipe |
|---|---|---|---|---|
| New York (7) | Sept. 1-Nov. 9 | Closed | Oct. 6-Nov. 4 | Sept. 1-Nov. 9 |
| North Carolina | Sept. 1-Nov. 8 | Sept. 1-Nov. 8 | Jan. 2-Jan. 31 | Nov. 14-Feb. 28 |
| Pennsylvania(1)(8) | Sept. 1-Nov. 8 | Closed | Oct. 18-Nov. 15 | Oct. 18-Nov. 29 |
| Rhode Island (9) | Sept. 1-Nov. 7 | Sept. 1-Nov. 7 | Nov. 1-Nov. 30 | Sept. 1-Nov. 9 |
| South Carolina | Sept. 15-Sept. 20 & Oct. 13-Dec. 15 | Sept. 15-Sept. 20 & Oct. 13-Dec. 15 | Jan. 2-Jan. 31 | Nov. 14-Feb. 28 |
| Vermont | Closed | Closed | Deferred | Deferred |
| Virginia | Sept. 10-Nov. 18 | Sept. 10-Nov. 18 | Nov. 8-Nov. 22 & Dec. 20-Jan. 3 | Oct. 9-Oct. 13& Oct. 22-Jan. 31 |
| West Virginia | Sept. 1-Nov. 8 | Closed | Oct. 24-Nov. 22 | Sept. 1-Dec. 13 |
| MISSISSIPPI FLYWAY | | | | |
| Alabama (10) | Nov. 21-Jan. 25 | Nov. 21-Jan. 25 | Dec. 18-Jan. 31 | Nov. 14-Feb. 28 |
| Arkansas | Sept. 13-Nov. 21 | Closed | Nov. 8-Dec. 22 | Nov. 1-Feb. 15 |
| Illinois (11) | Sept. 6-Nov. 14 | Closed | Oct. 18-Dec. 1 | Sept. 6-Dec. 21 |
| Indiana (12) | Sept. 1-Nov. 9 | Closed | Oct. 15-Nov. 28 | Sept. 1-Dec. 16 |
| Iowa (13) | Sept. 6-Nov. 14 | Closed | Oct. 4-Nov. 17 | Sept. 6-Nov. 30 |
| Kentucky | Sept. 1-Nov. 9 | Closed | Oct. 18-Dec. 1 | Sept. 17-Nov. 2 & Nov. 27-Jan. 25 |
| Louisiana (14) | Sept. 13-Sept. 28 | Sept. 13-Sept. 28 | Dec. 18-Jan. 31 | Deferred |
| Michigan (15) | Sept. 15-Nov. 14 | Closed | Sept. 20-Nov. 3 | Sept. 15-Nov. 14 |
| Minnesota | Sept. 1-Nov. 4 | Closed | Sept. 20-Nov. 3 | Sept. 1-Nov. 4 |
| Mississippi | Sept. 27-Dec. 5 | Sept. 27-Dec. 5 | Dec. 13-Jan. 26 | Nov. 8-Feb. 22 |
| Missouri | Sept. 1-Nov. 9 | Closed | Oct. 15-Nov. 28 | Sept. 1-Dec. 16 |
| Ohio | Sept. 1-Nov. 9 | Closed | Oct. 11-Nov. 24 | Sept. 1-Nov. 30 & Dec. 8-Dec. 23 |
| Tennessee | Deferred | Closed | Oct. 25-Dec. 8 | Nov. 14-Feb. 28 |
| Wisconsin | Deferred | Closed | Sept. 20-Nov. 3 | Deferred |

| | Sora and Virginia Rails | Clapper and King Rails | Woodcock | Common Snipe |
|---|---|---|---|---|
| CENTRAL FLYWAY | | | | |
| Colorado | Sept. 1-Nov. 9 | Closed | Closed | Sept. 1-Dec. 16 |
| Kansas | Sept. 1-Nov. 9 | Closed | Oct. 11-Nov. 24 | Sept. 1-Dec. 16 |
| Montana | Closed | Closed | Closed | Sept. 1-Dec. 16 |
| Nebraska (16) | Sept. 1-Nov. 9 | Closed | Sept. 20-Nov. 3 | Sept. 1-Dec. 16 |
| New Mexico (16) | Sept. 20-Nov. 28 | Closed | Closed | Oct. 11-Jan. 25 |
| North Dakota | Closed | Closed | Sept. 20-Nov. 3 | Sept. 20-Nov. 30 |
| Oklahoma | Sept. 1-Nov. 9 | Closed | Nov. 1-Dec. 15 | Oct. 1-Jan. 15 |
| South Dakota (17) | Closed | Closed | Closed | Sept. 1-Oct. 31 |
| Texas | Sept. 13-Sept. 28 & Nov. 1-Dec. 24 | Sept. 13-Sept. 28 & Nov. 1-Dec. 24 | Dec. 18-Jan. 31 | Nov. 1-Feb. 15 |
| Wyoming | Sept. 1-Nov. 9 | Closed | Closed | Sept. 1-Dec. 16 |
| PACIFIC FLYWAY | | | | |
| Arizona | Closed | Closed | Closed | Deferred |
| California | Closed | Closed | Closed | Oct. 18-Feb. 1 |
| Colorado | Sept. 1-Nov. 9 | Closed | Closed | Sept. 1-Dec. 16 |
| Idaho: | | | | |
| Area 1 | Closed | Closed | Closed | Deferred |
| Area 2 | Closed | Closed | Closed | Deferred |
| Montana | Closed | Closed | Closed | Sept. 1-Dec. 16 |
| Nevada | Closed | Closed | Closed | Deferred |
| New Mexico (16) | Sept. 20-Nov. 28 | Closed | Closed | Oct. 11-Jan. 25 |
| Oregon | Closed | Closed | Closed | Deferred |
| Utah | Closed | Closed | Closed | Oct. 4-Jan. 17 |
| Washington | Closed | Closed | Closed | Deferred |
| Wyoming | Sept. 1-Nov. 9 | Closed | Closed | Sept. 1-Dec. 16 |

(1) The bag and possession limits for sora and Virginia rails apply singly or in the aggregate of these species.

(2) All bag and possession limits for clapper and king rails apply singly or in the aggregate of the two species and, unless otherwise specified, the limits are in addition to the limits on sora and Virginia rails in all States. In Connecticut, Delaware, Maryland, and New Jersey, the limits for clapper and king rails are 10 daily and 20 in possession.

(3) In Connecticut, the daily bag and possession limits may not contain more than 1 king rail. The common snipe daily bag and possession limits are 3 and 6, respectively.

(4) In Maryland, no more than 1 king rail may be taken.

(5) In Massachusetts, the sora rail limits are 5 daily and 5 in possession; the Virginia rail limits are 10 daily and 10 in possession.

(6) In New Jersey, the season for king rails is closed by State regulation.

(7) In New York, the rail daily bag and possession limits are 8 and 16, respectively. Seasons for sora and Virginia rails and common snipe are closed on Long Island.

(8) In Pennsylvania, the daily bag and possession limits for rails are 3 and 6, respectively.

(9) In Rhode Island, the sora and Virginia rails limits are 1 daily and 2 in possession, singly or in the aggregate; the clapper and king rail limits are 1 daily and 2 in possession, singly or in the aggregate; the common snipe limits are 5 daily and 10 in possession.

(10) In Alabama, the rail limits are 15 daily and 15 in possession, singly or in the aggregate.

(11) In Illinois, shooting hours are from sunrise to sunset.

(12) In Indiana, the sora rail limits are 25 daily and 25 in possession. The season on Virginia rails is closed.

(13) In Iowa, the limits for sora and Virginia rails are 12 daily and 24 in possession.

(14) Additional days occurring after September 30 will be published with the late season selections.

(15) In Michigan, the aggregate limits for sora and Virginia rails are 8 daily and 16 in possession.

(16) In Nebraska and New Mexico, the rail limits are 10 daily and 20 in possession.

(17) In South Dakota, the snipe limits are 5 daily and 15 in possession.

6. Section 20.105 is amended by revising paragraphs (a) through (f) to read as follows:

**§20.105 Seasons, limits, and shooting hours for waterfowl, coots, and gallinules.**

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise noted. Area descriptions were published in the July 24, 2008, Federal Register (73 FR 43290).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Note: States with deferred seasons may select those seasons at the same time they select waterfowl seasons in August. Consult late-seasons regulations for further information.

(a) Common Moorhens and Purple Gallinules

| | Season Dates | Limits Bag | Possession |
|---|---|---|---|
| ATLANTIC FLYWAY | | | |
| Delaware | Sept. 5-Nov. 13 | 15 | 30 |
| Florida (1) | Sept. 1-Nov.9 | 15 | 30 |
| Georgia | Deferred | -- | – |
| New Jersey | Sept. 1-Nov. 8 | 10 | 20 |
| New York | | | |
| Long Island | Closed | -- | – |
| Remainder of State | Sept. 1-Nov. 9 | 8 | 16 |
| North Carolina | Sept. 1-Nov. 8 | 15 | 30 |
| Pennsylvania | Sept. 1-Nov. 8 | 3 | 6 |
| South Carolina | Sept. 15-Sept. 20 & | 15 | 30 |
| | Oct. 13-Dec. 15 | 15 | 30 |
| Virginia | Deferred | -- | – |
| West Virginia | Deferred | -- | – |
| MISSISSIPPI FLYWAY | | | |
| Alabama | Nov. 21-Jan. 25 | 15 | 15 |
| Arkansas | Sept. 1-Nov. 9 | 15 | 30 |
| Kentucky | Sept. 1-Nov. 9 | 15 | 30 |
| Louisiana (2) | Sept. 13-Sept. 28 | 15 | 30 |
| Michigan | Deferred | -- | -- |
| Minnesota | Deferred | -- | -- |
| Mississippi | Sept. 27-Dec. 5 | 15 | 30 |
| Ohio | Sept. 1-Nov. 9 | 15 | 30 |
| Tennessee | Deferred | -- | -- |
| Wisconsin | Deferred | -- | – |

| | Season Dates | Limits Bag | Possession |
|---|---|---|---|
| CENTRAL FLYWAY | | | |
| New Mexico | | | |
| Zone 1 | Oct. 4-Dec. 12 | 1 | 2 |
| Zone 2 | Oct. 4-Dec. 12 | 1 | 2 |
| Oklahoma | Sept. 1-Nov. 9 | 15 | 30 |
| Texas | Sept. 13-Sept. 28 & | 15 | 30 |
| | Nov. 1-Dec. 24 | 15 | 30 |
| Wyoming | Deferred | -- | – |
| PACIFIC FLYWAY | | | |
| All States | Deferred | -- | – |

(1) The season applies to common moorhens only.

(2) Additional days occurring after September 30 will be published with the late season selections.

(b) Sea Ducks (scoter, eider, and oldsquaw ducks in Atlantic Flyway).

Within the special sea duck areas, the daily bag limit is 7 scoter, eider, and oldsquaw ducks, singly or in the aggregate, of which no more than 4 may be scoters. Possession limits are twice the daily bag limit. These limits may be in addition to regular duck bag limits only during the regular duck season in the special sea duck hunting areas.

| | Season Dates | Limits Bag | Possession |
|---|---|---|---|
| Connecticut (1) | Sept. 23-Jan. 24 | 5 | 10 |
| Delaware | Sept. 23-Jan. 24 | 7 | 14 |
| Georgia | Deferred | -- | -- |
| Maine (2) | Oct. 1-Jan. 31 | 7 | 14 |
| Maryland | Deferred | -- | -- |
| Massachusetts | Deferred | -- | -- |
| New Hampshire (3) | Oct. 1-Jan. 15 | 7 | 14 |
| New Jersey | Sept. 23-Jan. 24 | 7 | 14 |

| | Season Dates | Limits Bag | Possession |
|---|---|---|---|
| New York | Oct. 11-Jan. 25 | 7 | 14 |
| North Carolina | Deferred | -- | – |
| Rhode Island | Oct. 11-Jan. 25 | 5 | 10 |
| South Carolina | Deferred | -- | -- |
| Virginia | Deferred | -- | – |

NOTE: Notwithstanding the provisions of this Part 20, the shooting of crippled waterfowl from a motorboat under power will be permitted in Maine, Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, Delaware, Virginia and Maryland in those areas described, delineated, and designated in their respective hunting regulations as special sea duck hunting areas.

(1) In Connecticut, the daily bag limit may include no more than 4 scoters or 4 oldsquaws.

(2) In Maine, the daily bag limit for eiders is 5, and the possession limit is 10.

(3) In New Hampshire, the daily bag limit may include no more than 4 scoters, 4 eiders, or 4 oldsquaws.

(c) Early (September) Duck Seasons.

Note: Unless otherwise specified, the seasons listed below are for teal only.

| | Season Dates | Limits Bag | Possession |
|---|---|---|---|
| ATLANTIC FLYWAY | | | |
| Delaware (1) | Sept. 18-Sept. 27 | 4 | 8 |
| Florida (2) | Sept. 20-Sept. 24 | 4 | 8 |
| Georgia | Sept. 20-Sept. 28 | 4 | 8 |
| Maryland (1)(3) | Sept. 18-Sept. 27 | 4 | 8 |
| North Carolina (1) | Sept. 20-Sept. 30 | 4 | 8 |
| South Carolina (3) | Sept. 19-Sept. 27 | 4 | 8 |
| Virginia (1) | Sept. 20-Sept. 30 | 4 | 8 |
| MISSISSIPPI FLYWAY | | | |
| Alabama | Sept. 6-Sept. 21 | 4 | 8 |
| Arkansas (3) | Sept. 13-Sept. 28 | 4 | 8 |

| | Season Dates | Limits Bag | Limits Possession |
|---|---|---|---|
| Illinois (3) | Sept. 6-Sept. 21 | 4 | 8 |
| Indiana (3) | Sept. 6-Sept. 21 | 4 | 8 |
| Iowa (4) | | | |
| North Zone | Sept. 20-Sept. 24 | -- | -- |
| South Zone | Sept. 20-Sept. 24 | -- | -- |
| Kentucky (2) | Sept. 17-Sept. 21 | 4 | 8 |
| Louisiana | Sept. 13-Sept. 28 | 4 | 8 |
| Mississippi | Sept. 13-Sept. 28 | 4 | 8 |
| Missouri (3) | Sept. 6-Sept. 21 | 4 | 8 |
| Ohio (3) | Sept. 6-Sept. 21 | 4 | 8 |
| Tennessee (2) | Sept. 13-Sept. 17 | 4 | 8 |
| CENTRAL FLYWAY | | | |
| Colorado (1) | Sept. 13-Sept. 21 | 4 | 8 |
| Kansas | | | |
| Low Plains | Sept. 13-Sept. 28 | 4 | 8 |
| High Plains | Sept. 13-Sept. 20 | 4 | 8 |
| Nebraska (1) | | | |
| Low Plains | Sept. 6-Sept. 21 | 4 | 8 |
| High Plains | Sept. 13-Sept. 21 | 4 | 8 |
| New Mexico | Sept. 20-Sept. 28 | 4 | 8 |
| Oklahoma | Sept. 13-Sept. 28 | 4 | 8 |
| Texas | | | |
| High Plains | Sept. 13-Sept. 21 | 4 | 8 |
| Rest of State | Sept. 13-Sept. 28 | 4 | 8 |

(1) Area restrictions. See State regulations.

(2) In Florida, Kentucky, and Tennessee, the daily bag limit is 4 wood ducks and teal in the aggregate, of which no more than 2 may be wood ducks. The possession limit is twice the daily bag limit.

(3) Shooting hours are from sunrise to sunset.

(4) In Iowa, the September season is part of the regular season, and limits will conform to those set for the regular season.

(d) Special Early Canada Goose Seasons.

| | Season Dates | Limits Bag | Possession |
|---|---|---|---|
| ATLANTIC FLYWAY | | | |
| Connecticut (1) | | | |
| North Zone | Sept. 2-Sept. 30 | 15 | 30 |
| South Zone | Sept. 15-Sept. 30 | 15 | 30 |
| Delaware | Sept. 1-Sept. 25 | 15 | 30 |
| Florida | Sept. 6-Sept. 24 | 5 | 10 |
| Georgia | Sept. 6-Sept. 28 | 5 | 10 |
| Maine | | | |
| Northern Zone | Sept. 2-Sept. 25 | 6 | 12 |
| Southern Zone | Sept. 2-Sept. 25 | 8 | 16 |
| Maryland (1)(2) | | | |
| Eastern Unit | Sept. 1-Sept. 15 | 8 | 16 |
| Western Unit | Sept. 1-Sept. 25 | 8 | 16 |
| Massachusetts | | | |
| Central Zone | Sept. 2-Sept. 25 | 7 | 14 |
| Coastal Zone | Sept. 2-Sept. 25 | 7 | 14 |
| Western Zone | Sept. 2-Sept. 25 | 7 | 14 |
| New Hampshire | Sept. 2-Sept. 25 | 5 | 10 |
| New Jersey (1)(2)(3) | Sept. 1-Sept. 30 | 15 | 30 |
| New York | | | |
| Lake Champlain Zone | Sept. 2-Sept. 25 | 5 | 10 |
| Northeastern Zone | Sept. 1-Sept. 25 | 8 | 16 |
| Western Zone | Sept. 1-Sept. 25 | 8 | 16 |
| Southeastern Zone | Sept. 1-Sept. 25 | 8 | 16 |
| Long Island Zone | Sept. 2-Sept. 30 | 8 | 16 |
| North Carolina (4)(5) | Sept. 1-Sept. 30 | 8 | 16 |
| Pennsylvania (1) | | | |
| SJBP Zone (6) | Sept. 1-Sept. 25 | 3 | 6 |
| Rest of State (7) | Sept. 1-Sept. 25 | 8 | 16 |
| Rhode Island | Sept. 1-Sept. 30 | 15 | 30 |
| South Carolina | | | |
| Early-Season Hunt Unit | Sept. 1-Sept. 30 | 15 | 30 |

| | Season Dates | Limits Bag | Possession |
|---|---|---|---|
| Vermont | | | |
| Lake Champlain Zone (8) | Sept. 2-Sept. 25 | 5 | 10 |
| Interior Vermont Zone | Sept. 2-Sept. 25 | 5 | 10 |
| Connecticut River Zone (9) | Sept. 2-Sept. 25 | 5 | 10 |
| Virginia (10) | Sept. 1-Sept. 25 | 10 | 20 |
| West Virginia | Sept. 1-Sept. 20 | 5 | 10 |
| MISSISSIPPI FLYWAY | | | |
| Alabama | Sept. 1-Sept. 15 | 5 | 10 |
| Arkansas | Sept. 1-Sept. 15 | 5 | 10 |
| Illinois | | | |
| Northeast Zone | Sept. 1-Sept. 15 | 5 | 10 |
| North Zone | Sept. 1-Sept. 15 | 5 | 10 |
| Central Zone | Sept. 1-Sept. 15 | 5 | 10 |
| South Zone | Sept. 1-Sept. 15 | 2 | 4 |
| Indiana | Sept. 1-Sept. 15 | 5 | 10 |
| Iowa | | | |
| South Goose Zone | | | |
| Des Moines Goose Zone | Sept. 1-Sept. 15 | 5 | 10 |
| Cedar Rapids/Iowa City Goose Zone | Sept. 1-Sept. 15 | 5 | 10 |
| Remainder of South Zone | Closed | | |
| North Goose Zone | | | |
| Cedar Falls/Waterloo Zone | Sept. 1-Sept. 15 | 5 | 10 |
| Remainder of North Zone | Closed | | |
| Kentucky (11) | Sept. 6-Sept. 14 | 2 | 4 |
| Michigan | | | |
| Upper Peninsula | Sept. 1-Sept. 10 | 5 | 10 |
| Lower Peninsula: | | | |
| Huron, Saginaw, and Tuscola Counties | Sept. 1-Sept. 10 | 5 | 10 |
| Remainder | Sept. 1-Sept. 15 | 5 | 10 |
| Minnesota | | | |
| Twin Cities Metro Zone | Sept. 6-Sept. 22 | 5 | 10 |
| Southeast Goose Zone | Sept. 6-Sept. 22 | 2 | 4 |
| Five Goose Zone | Sept. 6-Sept. 22 | 5 | 10 |
| Northwest Goose Zone | Sept. 6-Sept. 22 | 5 | 10 |
| Mississippi (1)(12) | Sept. 1-Sept. 15 | 5 | 10 |
| Ohio (11) | Sept. 1-Sept. 15 | 3 | 6 |

| | Season Dates | Limits Bag | Possession |
|---|---|---|---|
| Tennessee | Sept. 1-Sept. 15 | 5 | 10 |
| Wisconsin | Sept. 1-Sept. 15 | 5 | 10 |
| CENTRAL FLYWAY | | | |
| Nebraska (11) | | | |
| Sept. Canada Goose Unit | Sept. 6-Sept. 14 | 5 | 10 |
| North Dakota | | | |
| Missouri River Zone | Sept. 1-Sept. 7 | 5 | 10 |
| Remainder of State | Sept. 1-Sept. 15 | 5 | 10 |
| Oklahoma (1)(2)(3) | Sept. 1-Sept. 10 | 5 | 10 |
| South Dakota (11) | Sept. 6-Sept. 26 | 5 | 10 |
| PACIFIC FLYWAY | | | |
| Colorado: | Sept. 1-Sept. 9 | 3 | 6 |
| Oregon: | | | |
| Northwest Zone | Sept. 6-Sept. 15 | 5 | 10 |
| Southwest Zone (13) | Sept. 6-Sept. 15 | 5 | 10 |
| East Zone (13) | Sept. 6-Sept. 15 | 5 | 10 |
| Washington: | | | |
| Mgmt. Area 2B | Sept. 1-Sept. 15 | 5 | 10 |
| Mgmt. Areas 1 & 3 | Sept. 6-Sept. 10 | 5 | 10 |
| Mgmt. Area 4 & 5 | Sept. 6-Sept. 7 | 3 | 6 |
| Mgmt. Area 2A | Sept. 6-Sept. 10 | 3 | 6 |
| Wyoming | Sept. 1-Sept. 8 | 2 | 4 |

(1) Shooting hours are one-half hour before sunrise to one-half hour after sunset.

(2) The use of shotguns capable of holding more than 3 shotshells is allowed.

(3) The use of electronic calls is allowed.

(4) In North Carolina, in the area of Dare County that includes Roanoke Island, 1,000 yards around Roanoke Island, and 1,000 yards both north and south of Highway 64 causeway between Roanoke Island and Bodie Island, the daily bag and possession limits are 2 and 4, respectively.

(5) In North Carolina, shooting hours are one-half hour before sunrise to one-half hour after sunset in that area west of U.S. Highway 17 only.

(6) In Pennsylvania, in the area south of SR 198 from the Ohio state line to intersection of SR 18, SR 18 south to SR 618, SR 618 south to US Route 6, US Route 6 east to US Route 322/SR 18, US Route 322/SR 18 west to intersection of SR 3013, SR 3013 south to the Crawford/Mercer County line, not including the Pymatuning State Park Reservoir and an area to extend 100 yards inland from the shoreline of the reservoir, excluding the area east of SR 3011 (Hartstown Road ), the daily bag limit is one goose; except on State Game Lands 214 where is season is closed.

(7) In Pennsylvania, in the area of Lancaster and Lebanon Counties north of the Pennsylvania Turnpike, east of SR 501 to SR 419, south of SR 419 to the Lebanon-Berks County line, west of the Lebanon-Berks County line and the Lancaster-Berks County line to SR 1053, west of SR 1053 to the Pennsylvania Turnpike I-76, the daily bag limit is 1 goose with a possession limit of 2 geese. On State Game Lands No. 46 (Middle Creek Wildlife Mgmt Area), the season is closed.

(8) In Vermont, in Addison County north of Route 125, the daily bag and possession limit is 2 and 4, respectively.

(9) In Vermont, the Connecticut River Zone set by New Hampshire, is the same as the New Hampshire Inland Zone.

(10) In Virginia, shooting hours are one-half hour before sunrise to one-half hour after sunset from September 1 to September 19, and one-half hour before sunrise to sunset from September 20 to September 25 in the area east of I-95 where the September teal season is open. Shooting hours are one-half hour before sunrise to one-half hour after sunset from September 1 to September 25 in the area west of I-95.

(11) See State regulations for additional information and restrictions.

(12) In Mississippi, the season is closed on Roebuck Lake in Leflore County.

(13) In Oregon, the season is closed in the Southcoast Zone and the Klamath County Zone.

(e) Regular Goose Seasons.

Note: Bag and possession limits will conform to those set for the regular season.

| | Season Dates |
|---|---|
| MISSISSIPPI FLYWAY | |
| Michigan (1) | |
| Canada: | |
| MVP Zone | |
| Upper Peninsula | Sept. 22-Nov. 5 |
| Lower Peninsula | Deferred |
| SJBP Zone | Deferred |
| White-fronted and Brant | Deferred |
| Light geese | Deferred |
| Wisconsin | |
| Horicon Zone | Sept. 16-Sept. 30 |
| Collins Zone | Sept. 16-Sept. 30 |
| Exterior Zone | Sept. 20-Sept. 30 |

(1) In Michigan, season dates for the Muskegon Wastewater, Saginaw County, Allegan County, and Tuscola/Huron Goose Management Units in the South Zone will be established in the late-season regulatory process.

(f) Youth Waterfowl Hunting Days

The following seasons are open only to youth hunters. Youth hunters must be accompanied into the field by an adult at least 18 years of age. This adult cannot duck hunt but may participate in other open seasons.

**Definitions**

**Youth Hunters**: Includes youths 15 years of age or younger.

**The Atlantic Flyway**: Includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

**The Mississippi Flyway**: Includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

**The Central Flyway**: Includes Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except that the Jicarilla Apache Indian Reservation is in the Pacific Flyway), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

**The Pacific Flyway**: Includes Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington, and Wyoming (west of the Continental Divide including the Great Divide Basin).

Note: Bag and possession limits will conform to those set for the regular season.

| | Season Dates |
|---|---|
| ATLANTIC FLYWAY | |
| Connecticut | Deferred |
| Delaware | |
| Ducks, geese, brant, mergansers, and coots | Oct. 4 |
| Florida | Deferred |
| Georgia | |
| Ducks, geese, mergansers, coots, moorhens, and gallinules | Nov. 15 & 16 |
| Maine | |
| Ducks, mergansers, and coots | Sept. 20 |
| Maryland (1) | |
| Ducks, mergansers, coots, and Canada geese | Deferred |
| Massachusetts | Deferred |
| New Hampshire | |
| Ducks, geese, mergansers, and coots | Sept. 27 & 28 |
| New Jersey | |
| Ducks, geese, mergansers, coots, moorhens, and gallinules | |
| North Zone | Oct. 4 |
| South Zone | Nov. 7 & 8 |
| Coastal Zone | Oct. 25 |

| | Season Dates |
|---|---|
| New York | |
| Ducks, mergansers, coots, brant, and Canada geese (2) | |
| Long Island Zone | Nov. 8 & 9 |
| Lake Champlain Zone | Sept. 27 & 28 |
| Northeastern Zone | Sept. 20 & 21 |
| Southeastern Zone | Sept. 20 & 21 |
| Western Zone | Oct. 11 & 12 |
| North Carolina | Deferred |
| Pennsylvania | |
| Ducks, mergansers, Canada geese, coots, and moorhens | Sept. 20 |
| Rhode Island | |
| Ducks, mergansers and coots | Oct. 25 & 25 |
| South Carolina | Deferred |
| Vermont | |
| Ducks, geese, mergansers and coots | Sept. 27 & 28 |
| Virginia | Deferred |
| West Virginia (3) | |
| Ducks, geese, mergansers, coots, moorhens, and gallinules | Sept. 27 |
| MISSISSIPPI FLYWAY | |
| Alabama | |
| Ducks, mergansers, coots, geese, moorhens, and gallinules | Feb. 7 & 8 |
| Arkansas | Deferred |
| Illinois | Deferred |
| Indiana | Deferred |
| Iowa | |
| Ducks, geese, mergansers, and coots | |
| North Zone | Oct. 4 & 5 |
| South Zone | Oct. 4 & 5 |
| Kentucky | |
| Ducks, geese, mergansers, coots, moorhens, and gallinules | |
| East Zone | Nov. 1 & 2 |
| West Zone | Feb. 7 & 8 |

| | Season Dates |
|---|---|
| Louisiana | Deferred |
| Michigan | |
| Ducks, geese, mergansers, coots, moorhens, and gallinules | Sept. 20 & 21 |
| Minnesota (4) | |
| Ducks, geese, mergansers, coots, moorhens, and gallinules | Sept. 20 |
| Mississippi | Deferred |
| Missouri | Deferred |
| Ohio | Deferred |
| Tennessee | Deferred |
| Wisconsin | |
| Ducks, geese, mergansers, coots, moorhens, and gallinules | Sept. 20 & 21 |
| CENTRAL FLYWAY | |
| Colorado | |
| Ducks, dark geese, mergansers, and coots | |
| Mountain/Foothills Zone | Sept. 27 & 28 |
| Eastern Plains Zone | Sept. 27 & 28 |
| Kansas (5) | Deferred |
| Montana | |
| Ducks, geese, mergansers, and coots | Sept. 27 & 28 |
| Nebraska (6) | |
| Ducks, geese, mergansers, and coots | Sept. 27 & 28 |
| New Mexico | |
| Ducks, mergansers, coots, and moorhens | |
| North Zone | Oct. 4 & 5 |
| South Zone | Oct. 18 & 19 |
| North Dakota (7) | |
| Ducks, geese, mergansers, and coots | Sept. 20 & 21 |
| Oklahoma | Deferred |
| South Dakota (7) | |
| Ducks, Canada geese, mergansers, and coots | Sept. 20 & 21 |
| Texas | Deferred |

| | Season Dates |
|---|---|
| Wyoming | |
| Ducks, geese, mergansers, and coots | |
| Zone 1 | Sept. 27 & 28 |
| Zone 2 | Sept. 20 & 21 |
| PACIFIC FLYWAY | |
| Arizona | |
| Ducks, geese, mergansers, coots, moorhens, and gallinules | |
| North Zone | Sept. 27 & 28 |
| South Zone | Jan. 31 & Feb. 1 |
| California | |
| Ducks, geese, mergansers, coots, moorhens, and gallinules | |
| Northeastern Zone | Sept. 20 & 21 |
| Colorado River Zone | Deferred |
| Southern Zone | Deferred |
| Southern San Joaquin Valley Zone | Deferred |
| Balance-of-State Zone | Deferred |
| Colorado | |
| Ducks, geese, mergansers, and coots | Oct. 18 & 19 |
| Idaho | |
| Ducks, Canada geese, mergansers, coots, moorhens, and gallinules | Sept. 27 & 28 |
| Montana | |
| Ducks, geese, mergansers, and coots | Sept. 27 & 28 |
| Nevada | Deferred |
| New Mexico | |
| Ducks, mergansers, moorhens, and coots | Oct. 4-Oct. 5 |
| Oregon (8) | |
| Ducks, Canada geese, mergansers, coots, moorhens, and gallinules | Sept. 27 & 28 |
| Utah | |
| Ducks, geese, mergansers, coots, moorhens, and gallinules | Sept. 20 |
| Washington | |
| Ducks, Canada geese, mergansers, and coots | Sept. 20 & 21 |
| Wyoming | |
| Ducks, dark geese, mergansers, and coots | Sept. 20 & 21 |

(1) In Maryland, the accompanying adult must be at least 21 years of age and possess a valid Maryland hunting license (or be exempt from the license requirement). This accompanying adult may not shoot or possess a firearm.

(2) In New York, the daily bag limit for Canada geese is 2.

(3) In West Virginia, the accompanying adult must be at least 21 years of age.

(4) In Minnesota, the Canada goose limit is 5, except that in the Twin Cities, Southeast, and Northwest Goose Zones, Swan Lake Area, and Carlos Avery Wildlife Management Area the limit is 1.

(5) In Kansas, the adult accompanying the youth must possess any licenses and/or stamps required by law for that individual to hunt waterfowl.

(6) In Nebraska, see State regulations for additional information on the daily bag limit.

(7) In North Dakota and South Dakota, the limit for Canada geese is 3, except in areas where the Special Early Canada goose season is open. In those areas, the limit is the same as for that special season.

(8) In Oregon, the Canada goose season is closed for the youth hunt in the Northwest Special Permit Goose Zone and the Northwest General Zone.

7. Section 20.106 is revised to read as follows:

**§20.106 Seasons, limits, and shooting hours for sandhill cranes.**

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits on the species designated in this section are as follows:

Shooting and Hawking hours are one-half hour before sunrise until sunset, except as otherwise noted. Area descriptions were published in the July 24, 2008, Federal Register (73 FR 43290).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Note: States with deferred seasons may select those seasons at the same time they select waterfowl seasons in August. Consult late-season regulations for further information.

| | Season Dates | Limits Bag | Limits Possession |
|---|---|---|---|
| CENTRAL FLYWAY | | | |
| Colorado (1) | Oct. 4-Nov. 30 | 3 | 6 |
| Kansas (1)(2)(3) | Nov. 5-Jan. 1 | 3 | 6 |
| Montana | | | |
| Regular Season Area (1) | Sept. 27-Nov. 23 | 3 | 6 |
| Special Season Area (4) | Sept. 6-Sept. 21 | | 2 per season |
| New Mexico | | | |
| Regular Season Area (1) | Oct. 31-Jan. 31 | 3 | 6 |
| Middle Rio Grande Valley Area (4) | Nov. 1-Nov. 2 & | 3 | 6 |
| | Nov. 22-Nov. 23 & | 3 | 6 |
| | Dec. 6-Dec. 7 & | 3 | 6 |
| | Jan. 10-Jan. 11 | 3 | 6 |

| | Season Dates | Limits Bag | Limits Possession |
|---|---|---|---|
| New Mexico (cont.) | | | |
| Southwest Area (4) | Nov. 1-Nov. 9 & | 3 | 6 |
| | Jan. 3-Jan. 4 | 3 | 6 |
| Estancia Valley (4) | Nov. 1-Nov. 9 | 3 | 6 |
| North Dakota (1) | | | |
| Area 1 | Sept. 20-Nov. 16 | 3 | 6 |
| Area 2 | Sept. 20-Oct. 26 | 2 | 4 |
| Oklahoma (1) | Deferred | -- | – |
| South Dakota (1) | Sept. 27-Nov. 23 | 3 | 6 |
| Texas (1) | Deferred | -- | – |
| Wyoming | | | |
| Regular Season Area (1) | Sept. 13-Nov. 9 | 3 | 6 |
| Riverton-Boysen Unit (Area 4) (4) | Sept. 13-Oct. 3 | 1 per season | |
| Big Horn and Park Counties (Area 6) (4) | Sept. 13-Sept. 28 | 1 per season | |
| PACIFIC FLYWAY | | | |
| Arizona (4) | Nov. 14-Nov. 16 & | 2 per season | |
| | Nov. 22-Nov. 24 & | 2 per season | |
| | Nov. 26-Nov. 28 & | 2 per season | |
| | Nov. 30-Dec. 2 & | 2 per season | |
| | Dec. 4-Dec. 6 & | 2 per season | |
| | Dec. 12-Dec. 14 | 2 per season | |
| Idaho (4) | Sept. 1-Sept. 15 | 2 | 9 per season |
| Montana | | | |
| Special Season Area (4) | Sept. 6-Sept. 21 | 2 per season | |
| Utah (4) | | | |
| Rich County | Sept. 6-Sept. 14 | 1 per season | |
| Cache County | Sept. 6-Sept. 14 | 1 per season | |
| Eastern Box Elder County | Sept. 6-Sept. 14 | 1 per season | |
| Uintah County | Sept. 20-Sept. 28 | 1 per season | |
| Wyoming (4) | | | |
| Bear River Area (Area 1) | Sept. 1-Sept. 8 | 1 per season | |
| Salt River Area (Area 2) | Sept. 1-Sept. 8 | 1 per season | |
| Eden-Farson Area (Area 3) | Sept. 1-Sept. 8 | 1 per season | |

(1) Each person participating in the regular sandhill crane seasons must have a valid sandhill crane hunting permit and/or a State-issued Harvest Information Survey Program (HIP) certification for game bird hunting in their possession while hunting.

(2) In Kansas, shooting hours are from one-half hour after sunrise until 2:00 p.m through November 30, and from sunrise until 2:00 p.m. December 1 through January 1.

(3) In Kansas, each person desiring to hunt sandhill cranes in Kansas is required to pass an annual, on-line sandhill crane identification examination.

(4) Hunting is by State permit only.

8. Section 20.109 is revised to read as follows:

**§20.109 Extended seasons, limits, and hours for taking migratory game birds by falconry.**

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Hawking hours are one-half hour before sunrise until sunset except as otherwise noted. Area descriptions were published in the July 24, 2008, Federal Register (73 FR 43290). For those extended seasons for ducks, mergansers, and coots, area descriptions were published in the August 2008, Federal Register and will be published again in a late-September 2008 Federal Register.

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

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Daily bag limit . . . . . 3 migratory birds, singly or in the aggregate.

Possession limit . . . . . 6 migratory birds, singly or in the aggregate.

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These limits apply to falconry during both regular hunting seasons and extended falconry seasons -- unless further restricted by State regulations. The falconry bag and possession limits are not in addition to regular season limits. Unless otherwise specified, extended falconry for ducks does not include sea ducks within the special sea duck areas. Only extended falconry seasons are shown below. Many States permit falconry during the gun seasons. Please consult State regulations for details.

For ducks, mergansers, coots, geese, and some moorhen seasons; additional season days occurring after September 30 will be published with the late-season selections. Some States have deferred selections. Consult late-season regulations for further information.

| | Extended Falconry Dates |
|---|---|
| ATLANTIC FLYWAY | |
| Delaware | |
| Mourning doves | Sept. 29-Oct. 18 & Jan. 22-Feb. 7 |
| Rail | Nov. 14-Dec. 20 |
| Woodcock | Oct. 1-Oct. 9 & Feb. 1-Mar. 10 |
| Snipe | Oct. 1-Oct. 9 & Feb. 1-Mar. 10 |
| Florida | |
| Mourning and white-winged doves | Oct. 28-Nov. 14 & Dec. 1-Dec. 12 & Jan. 12-Jan. 18 |
| Rails | Nov. 10-Dec. 16 |
| Woodcock | Nov. 24-Dec. 19 & Jan. 19-Mar. 10 |
| Common moorhens | Nov. 10-Dec. 14 |
| Georgia | |
| Moorhens, gallinules, and sea ducks | Dec. 1-Dec. 5 & Jan. 26-Feb. 13 |
| Maryland | |
| Mourning doves | Oct. 12-Nov. 9 & Jan. 4- Jan. 11 |
| Rails | Nov. 9-Dec. 16 |
| Woodcock | Oct. 1-Nov. 1 & Jan. 25-Mar. 10 |
| North Carolina | |
| Mourning doves | Oct. 17-Nov. 22 |
| Rails | Nov. 10-Dec. 13 |
| Woodcock | Nov. 17-Jan. 1 |
| Common moorhens | Nov. 10-Dec. 13 |

| | Extended Falconry Dates |
|---|---|
| Pennsylvania | |
| Mourning doves | Sept. 29-Oct. 17 & Dec. 1-Dec. 18 |
| Rails | Nov. 10-Dec. 17 |
| Woodcock | Sept. 1-Oct. 17 & Nov. 17-Dec. 17 |
| Snipe | Sept. 1-Oct. 17 & Dec. 1-Dec. 17 |
| Moorhens and gallinules | Nov. 10-Dec. 17 |
| Virginia | |
| Mourning doves | Sept. 28-Oct. 3 & Nov. 1 only & Dec. 1-Dec. 26 |
| Woodcock | Oct. 20-Nov. 7 & Nov. 23-Dec. 19 & Jan. 4-Feb. 3 |
| Rails | Nov. 19-Dec. 25 |
| MISSISSIPPI FLYWAY | |
| Illinois | |
| Mourning doves | Oct. 25-Oct. 31 & Nov. 17-Dec. 16 |
| Rails | Sept. 1-Sept. 5 & Nov. 15-Dec. 16 |
| Woodcock | Sept. 1-Oct. 17 & Dec. 2-Dec. 16 |
| Indiana | |
| Mourning doves | Oct. 17-Nov. 6 & Jan. 1-Jan. 16 |
| Woodcock | Sept. 20-Oct. 14 & Nov. 29-Jan. 4 |
| Ducks, mergansers, and coots (1) North Zone | Sept. 27-Sept. 30 |

| | Extended Falconry Dates |
|---|---|
| Louisiana | |
| Mourning doves | Sept. 22-Oct. 7 |
| Woodcock | Oct. 28-Dec. 17 & Feb. 1-Feb. 11 |
| Minnesota | |
| Woodcock | Sept. 1-Sept. 19 & Nov. 4-Dec. 16 |
| Rails and snipe | Nov. 5-Dec. 16 |
| Missouri | |
| Mourning and white-winged doves | Nov. 10-Dec. 16 |
| Ducks, mergansers, and coots | Sept. 6-Sept. 21 |
| Ohio | |
| Ducks | Sept. 1-Sept. 16 |
| Canada geese | Sept. 1-Sept. 15 |
| Tennessee | |
| Mourning doves | Sept. 27-Oct. 10 & Oct. 27-Nov. 18 |
| Ducks (1) | Sept. 18-Oct. 23 |
| Wisconsin | |
| Rails, snipe, moorhens, and gallinules (1) | Sept. 1-Sept. 26 |
| Woodcock | Sept. 1-Sept. 19 |
| Ducks, mergansers, and coots | Sept. 20-Sept. 21 |
| CENTRAL FLYWAY | |
| Montana (2) | |
| Ducks, mergansers, and coots (1) | Sept. 24-Sept. 30 |

| | Extended Falconry Dates |
|---|---|
| Nebraska | |
| Ducks, mergansers, and coots | |
| High Plains | Sept. 13-Sept. 21 & Sept. 27-Sept. 28 |
| Low Plains | Sept. 1-Sept. 30 |
| New Mexico | |
| Doves | |
| North Zone | Oct. 31-Nov. 12 & Nov. 27-Dec. 30 |
| South Zone | Oct. 1-Nov. 12 & Nov. 27-Nov. 30 |
| Band-tailed pigeons | |
| North Zone | Sept. 21-Dec. 16 |
| South Zone | Oct. 21-Jan. 15 |
| Ducks and coots | Sept. 15-Sept. 23 |
| Sandhill cranes | |
| Regular Season Area | Oct. 17-Oct. 30 |
| Estancia Valley Area | Nov. 1-Dec. 30 |
| Common moorhens | Dec. 13-Jan. 18 |
| Sora and Virginia rails | Nov. 29-Jan. 4 |
| North Dakota | |
| Ducks, mergansers, and coots | Sept. 8-Sept. 12 & Sept. 15-Sept. 19 |
| Snipe | Sept. 8-Sept. 12 & Sept. 15-Sept. 19 |
| South Dakota | |
| Ducks, mergansers, and coots (1) | |
| High Plains | Sept. 4-Sept. 11 |
| Low Plains | |
| North Zone | Sept. 4-Sept. 19 & Sept. 22-Sept. 26 |
| Middle Zone | Sept. 4-Sept. 19 & Sept. 22-Sept. 26 |
| South Zone | Sept. 4-Sept. 19 & Sept. 22-Sept. 30 |

| | Extended Falconry Dates |
|---|---|
| Texas | |
| Doves | Nov. 19-Dec. 25 |
| Rails and gallinules | Dec. 26-Jan. 31 |
| Woodcock | Nov. 24-Dec. 17 |
| Wyoming | |
| Rails | Nov. 10-Dec. 16 |
| Ducks, mergansers, and coots (1) | |
| Zone 1 | Sept. 24-Oct. 3 |
| Zone 2 | Sept. 17-Sept. 26 |
| PACIFIC FLYWAY | |
| Arizona | |
| Doves | Sept. 17-Nov. 2 |
| Idaho | |
| Mourning doves | Nov. 1-Jan. 16 |
| New Mexico | |
| Doves | |
| North Zone | Oct. 31-Nov. 12 & Nov. 27-Dec. 30 |
| South Zone | Oct. 1-Nov. 12 & Nov. 27-Nov. 30 |
| Band-tailed pigeons | |
| North Zone | Sept. 21-Dec. 16 |
| South Zone | Oct. 21-Jan. 15 |
| Oregon (3) | |
| Mourning doves | Oct. 1-Dec. 16 |
| Band-tailed pigeons | Sept. 1-Sept. 14 & Sept. 24-Dec. 16 |
| Utah | |
| Doves and band-tailed pigeons | Oct. 1-Dec. 16 |

| | Extended Falconry Dates |
|---|---|
| Washington | |
| Mourning doves | Oct. 1-Dec. 31 |
| Wyoming | |
| Rails | Nov. 10-Dec. 16 |
| Ducks, mergansers, and coots (1) | Sept. 20-Sept. 21 |

(1) Additional days occurring after September 30 will be published with the late-season selections.

(2) In Montana, the bag limit is 2 and the possession limit is 6.

(3) In Oregon, no more than 1 pigeon daily in bag or possession.

[FR Doc. E8–20080 Filed 8–28–08; 8:45 am]
BILLING CODE 4310–55–C

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 20**

**[FWS–R9–MB–2008–0032; 91200–1231–9BPP–L2]**

**RIN 1018–AV62**

## Migratory Bird Hunting; Proposed Frameworks for Late-Season Migratory Bird Hunting Regulations

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; supplemental.

**SUMMARY:** The Fish and Wildlife Service (hereinafter Service or we) is proposing to establish the 2008–09 late-season hunting regulations for certain migratory game birds. We annually prescribe frameworks, or outer limits, for dates and times when hunting may occur and the number of birds that may be taken and possessed in late seasons. These frameworks are necessary to allow State selections of seasons and limits and to allow recreational harvest at levels compatible with population and habitat conditions.

**DATES:** You must submit comments on the proposed migratory bird hunting late-season frameworks by September 8, 2008.

**ADDRESSES:** You may submit comments on the proposals by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: 1018–AV62; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

**FOR FURTHER INFORMATION CONTACT:** Ron W. Kokel, U.S. Fish and Wildlife Service, Department of the Interior, MS MBSP–4107–ARLSQ, 1849 C Street, NW., Washington, DC 20240; (703) 358–1714.

**SUPPLEMENTARY INFORMATION:**

### Regulations Schedule for 2008

On May 28, 2008, we published in the **Federal Register** (73 FR 30712) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and dealt with the establishment of seasons, limits, and other regulations for hunting migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. Major steps in the 2008–09 regulatory cycle relating to open public meetings and **Federal Register** notifications were also identified in the May 28 proposed rule. Further, we explained that all sections of subsequent documents outlining hunting frameworks and guidelines were organized under numbered headings.

On June 18, 2008, we published in the **Federal Register** (73 FR 34692) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations. The June 18 supplement also provided detailed information on the 2008–09 regulatory schedule and announced the SRC and Flyway Council meetings.

On June 25 and 26, we held open meetings with the Flyway Council Consultants, at which the participants reviewed information on the current status of migratory shore and upland game birds and developed recommendations for the 2008–09 regulations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 2008–09 regular waterfowl seasons. On July 24, 2008, we published in the **Federal Register** (73 FR 43290) a third document specifically dealing with the proposed frameworks for early-season regulations. On August 27, 2008, we published a rulemaking establishing final frameworks for early-season migratory bird hunting regulations for the 2008–09 season.

On July 30–31, 2008, we held open meetings with the Flyway Council Consultants, at which the participants reviewed the status of waterfowl and developed recommendations for the 2008–09 regulations for these species. This document deals specifically with proposed frameworks for the late-season migratory bird hunting regulations. It will lead to final frameworks from which States may select season dates, shooting hours, areas, and limits.

We have considered all pertinent comments received through August 1, 2008, in developing this document. In addition, new proposals for certain late-season regulations are provided for public comment. The comment period is specified above under **DATES**. We will publish final regulatory frameworks for late-season migratory game bird hunting in the **Federal Register** on or around September 22, 2008.

### Population Status and Harvest

The following paragraphs provide a brief summary of information on the status and harvest of waterfowl excerpted from various reports. For more detailed information on methodologies and results, you may obtain complete copies of the various reports at the address indicated under **ADDRESSES** or from our Web site at *http://www.fws.gov/migratorybirds/reports/reports.html.*

*Status of Ducks*

Federal, provincial, and State agencies conduct surveys each spring to estimate the size of breeding populations and to evaluate the conditions of the habitats. These surveys are conducted using fixed-wing aircraft and helicopters and encompass principal breeding areas of North America, and cover over 2.0 million square miles. The Traditional survey area comprises Alaska, Canada, and the northcentral United States, and includes approximately 1.3 million square miles. The Eastern survey area includes parts of Ontario, Quebec, Labrador, Newfoundland, Nova Scotia, Prince Edward Island, New Brunswick, New York, and Maine, an area of approximately 0.7 million square miles.

*Breeding Ground Conditions*

Habitat conditions during the 2008 Waterfowl Breeding Population and Habitat Survey were characterized in many areas by a delayed spring compared to several preceding years. Drought in many parts of the traditional survey area contrasted sharply with record snow and rainfall in the eastern survey area. The total pond estimate (Prairie Canada and United States combined) was 4.4 ± 0.2 million ponds, 37 percent below last year's estimate of 7.0 ± 0.3 million ponds and 10 percent lower than the long-term average of 4.9 ± 0.03 million ponds. The 2008 estimate of ponds in Prairie Canada was 3.1 ± 0.1 million. This was a 39 percent decrease from last year's estimate (5.0 ± 0.3 million), and 11 percent below the 1955–2007 average (3.4 ± 0.03 million). The 2008 pond estimate for the north-central United States (1.4 ± 0.1 million) was 30 percent lower than last year's estimate (2.0 ± 0.1 million) and 11 percent below the long-term average (1.5 ± 0.02 million).

*Breeding Population Status*

In the Waterfowl Breeding Population and Habitat Survey traditional survey area (strata 1–18, 20–50, and 75–77), the total duck population estimate was 37.3 ± 0.6 [SE] million birds. This was 9 percent lower than last year's estimate of 41.2 ± 0.7 million birds, but 11 percent above the 1955–2007 long-term average. Mallard (*Anas platyrhynchos*) abundance was 7.7 ± 0.3 million birds, similar to last year's estimate of 8.3 ± 0.3 million birds and to the long-term average. Blue-winged teal (*A. discors*) estimated abundance was 6.6 ± 0.3 million birds similar to last year's estimate of 6.7 ± 0.4 million birds, and 45 percent above the long-term average. Estimated abundances of gadwall (*A. strepera;* 2.7 ± 0.2 million) and northern shovelers (*A. clypeata;* 3.5 ± 0.2 million) were lower than those of last year (−19 percent and −23 percent, respectively), but both remained 56 percent above their long-term averages. Estimated abundance of American wigeon (*A. americana;* 2.5 ± 0.2 million) was similar to the 2007 estimate and the long-term average. Estimated abundances of green-winged teal (*A. crecca;* 3.0 ± 0.2 million) and redheads (*Aythya americana;* 1.1 ± 0.1 million) were similar to last year's, but were each >50 percent above their long-term averages. The redhead and green-winged teal estimates were the highest and the second highest ever for the traditional survey area. The canvasback (*A. valisineria*) estimate of 0.5 ± 0.05 million was down 44 percent relative to 2007's record high, and 14 percent below the long-term average. Northern pintails (*Anas acuta;* 2.6 ± 0.1 million) were 22 percent below last year's estimate and 36 percent below their long-term average. The scaup (*Aythya affinis* and *A. marila* combined; 3.7 ± 0.2 million) estimate was similar to that of 2007, and remained 27 percent below the long-term average.

The eastern survey area was restratified in 2005 and is now composed of strata 51–72. Estimates of mallards, scaup, scoters (black [*Melanitta nigra*], white-winged [*M. fusca*], and surf [*M. perspicillata*]), green-winged teal, American wigeon, bufflehead (*B. albeola*), American black duck (*A. rubripes*), ring-necked duck (*Aythya collaris*), mergansers (red-breasted [*Mergus serrator*], common [*M. merganser*], and hooded [*Lophodytes cucullatus*]), and goldeneye (common [*Bucephala clangula*] and Barrow's [*B. islandica*]) all were similar to their 2007 estimates and long-term averages.

*Fall Flight Estimate*

The mid-continent mallard population is composed of mallards from the traditional survey area (revised in 2008 to exclude Alaska mallards), Michigan, Minnesota, and Wisconsin, and was estimated to be 7.7 ± 0.3 million. This was similar to the revised 2007 estimate of 8.5 ± 0.3 million. In 2007, we reported a projected mallard fall-flight index of 11.4 million ± 1.0 million. After the removal of Alaska mallards from the mid-continent stock, the revised 2007 fall-flight estimate was 10.9 ± 1.0 million, which was not significantly different from the 2008 estimate of 9.2 ± 0.8 million. These indices were based on mid-continent mallard population models revised in 2002, and the 2008 updated model weights, and therefore differ from those previously published.

See section 1.A. Harvest Strategy Considerations for further discussion of the implications of this information for this year's selection of the appropriate hunting regulations.

*Status of Geese and Swans*

We provide information on the population status and productivity of North American Canada geese (*Branta canadensis*), brant (*B. bernicla*), snow geese (*Chen caerulescens*), Ross' geese (*C. rossii*), emperor geese (*C. canagica*), white-fronted geese (*Anser albifrons*), and tundra swans (*Cygnus columbianus*). In May of 2008, much of eastern Arctic and subarctic Canada experienced well above-average temperatures which contributed to average or early availability of nesting sites. Reports from most other important goose and swan nesting areas indicated near-average nesting phenology and average production of young in 2008. Poor nesting conditions were reported from Wrangel Island, Russia and relatively small areas along western Hudson Bay, Bristol Bay (Alaska), and interior Alaska. Reduced wetland abundance in the Canadian and U.S. prairies, and a cool and wet spring in other southern areas may have reduced the production of some temperate-nesting Canada geese in 2008. Primary abundance indices increased for 17 goose populations and decreased for 9 goose populations in 2008 compared to 2007. Primary abundance indices for both populations of tundra swans decreased in 2008 from 2007 levels. The following populations displayed significant positive trends during the most recent 10-year period ($P < 0.05$): Mississippi Flyway Giant, Aleutian, Atlantic Canada geese, Western Arctic/Wrangel Island snow geese, and Pacific white-fronted geese. No populations showed a significant negative 10-year trend. The forecast for the production of geese and swans in North America in 2008 is regionally variable, but production for many populations will be improved from the generally low production observed in 2007.

*Waterfowl Harvest and Hunter Activity*

National surveys of migratory bird hunters were conducted during the 2006 and 2007 hunting seasons. About 1.2 million waterfowl hunters harvested 13,808,100 (± 4 percent) ducks and 3,579,100 (± 5 percent) geese in 2006, and harvested 14,578,900 (± 4 percent) ducks and 3,666,100 (± 6 percent) geese in 2007. Mallard, green-winged teal, gadwall, blue-winged/cinnamon teal (Anas cyanoptera), and wood duck (Aix sponsa) were the most-harvested duck species, and Canada goose was the predominant goose species in the harvest. Coot hunters (about 39,400 in 2006 and 33,700 in 2007) harvested 199,100 (± 29 percent) coots in 2006 and 198,300 (± 29 percent) in 2007.

**Review of Public Comments and Flyway Council Recommendations**

The preliminary proposed rulemaking, which appeared in the May 28, 2008, **Federal Register**, opened the public comment period for migratory game bird hunting regulations. The supplemental proposed rule, which appeared in the June 18, 2008, **Federal Register**, discussed the regulatory alternatives for the 2008–09 duck hunting season. Late-season comments are summarized below and numbered in the order used in the May 28 and June 18 **Federal Register** documents. We have included only the numbered items pertaining to late-season issues for which we received written comments. Consequently, the issues do not follow in successive numerical or alphabetical order.

We received recommendations from all four Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the annual review of the frameworks performed by the Councils, support for continuation of last year's frameworks is assumed for items for which no recommendations were received. Council recommendations for changes in the frameworks are summarized below.

We seek additional information and comments on the recommendations in this supplemental proposed rule. New proposals and modifications to previously described proposals are discussed below. Wherever possible,

they are discussed under headings corresponding to the numbered items in the May 28 and June 18, 2008, **Federal Register** documents.

**General**

*Written Comments:* An individual commenter protested the entire migratory bird hunting regulations process, the killing of all migratory birds, and the Flyway Council process.

*Service Response:* Our long-term objectives continue to include providing opportunities to harvest portions of certain migratory game bird populations and to limit harvests to levels compatible with each population's ability to maintain healthy, viable numbers. Having taken into account the zones of temperature and the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory birds, we believe that the hunting seasons provided herein are compatible with the current status of migratory bird populations and long-term population goals. Additionally, we are obligated to, and do, give serious consideration to all information received as public comment. While there are problems inherent with any type of representative management of public-trust resources, we believe that the Flyway-Council system of migratory bird management has been a longstanding example of State-Federal cooperative management since its establishment in 1952. However, as always, we continue to seek new ways to streamline and improve the process.

*1. Ducks*

*Categories used to discuss issues related to duck harvest management are:* (A) Harvest Strategy Considerations, (B) Regulatory Alternatives, (C) Zones and Split Seasons, and (D) Special Seasons/Species Management. The categories correspond to previously published issues/discussion, and only those containing substantial recommendations are discussed below.

A. Harvest Strategy Considerations

*Council Recommendations:* The Atlantic and Pacific Flyway Councils and the Upper- and Lower-Regulations Committees of the Mississippi Flyway Council recommended the adoption of the ''liberal'' regulatory alternative.

The Mississippi Flyway Council opposed the implementation of the western mallard Adaptive Harvest Management (AHM) protocol and recommended the midcontinent mallard AHM protocol should be used for all three western Flyways.

The Central Flyway Council also recommended the ''liberal'' alternative. However, as part of their Hunter's Choice experiment, they recommended continuation of the following bag limits:

In Colorado, Montana, Nebraska, New Mexico, and Oklahoma, the daily bag limit would be six ducks, with species and sex restrictions as follows: five mallards (no more than two of which may be females), two redheads, two scaup, two wood ducks, one pintail, one mottled duck, and one canvasback. For pintails and canvasbacks, the season length would be 39 days, which may be split according to applicable zones/split duck hunting configurations approved for each State.

In Kansas, North Dakota, South Dakota, Texas, and Wyoming, the daily bag limit would be five ducks, with species and sex restrictions as follows: two scaup, two redheads, and two wood ducks, and only one from the following group—hen mallards, mottled ducks, pintails, canvasbacks.

*Service Response:* We are continuing development of an AHM protocol that would allow hunting regulations to vary among Flyways in a manner that recognizes each Flyway's unique breeding-ground derivation of mallards. In the July 24 **Federal Register**, we described and adopted a protocol for regulatory decision-making for the newly defined stock of western mallards. For the 2008 hunting season, we believe that the prescribed regulatory choice for Pacific Flyway should be based on the status of this western mallard breeding stock, while the regulatory choice for the Mississippi and Central Flyways should depend on the status of the recently redefined mid-continent mallard stock. In defining the western breeding stock, based on available data, mallards breeding in Alaska were disassociated with the mid-continent mallard stock and reassigned to the western stock. We also recommend that the regulatory choice for the Atlantic Flyway continue to depend on the status of eastern mallards.

For the 2008 hunting season, we are continuing to consider the same regulatory alternatives as those used last year. The nature of the restrictive, moderate, and liberal alternatives has remained essentially unchanged since 1997, except that extended framework dates have been offered in the moderate and liberal regulatory alternatives since 2002. Also, in 2003, we agreed to place a constraint on closed seasons in the western three Flyways whenever the midcontinent mallard breeding-population size (as defined prior to 2008; traditional survey area plus Minnesota, Michigan, and Wisconsin) was ≥5.5 million. As we described in the July 24 **Federal Register**, redefinition of the midcontinent mallard stock through the removal of Alaska necessitated that both the population constraint (North American Waterfowl Management Plan goal plus Minnesota, Michigan, and Wisconsin) and the closed season constraint in the midcontinent mallard objective function be rescaled to 4.75 million in order to achieve performance of the mid-continent mallard strategy that is comparable to performance prior to the stock redefinition.

*Optimal AHM strategies for the 2008 hunting season were calculated using:* (1) Harvest-management objectives specific to each mallard stock; (2) the 2008 regulatory alternatives; and (3) current population models and associated weights for midcontinent, western, and eastern mallards. Based on this year's survey results of 7.87 million midcontinent mallards (traditional survey area minus Alaska plus Minnesota, Wisconsin, and Michigan), 3.06 million ponds in Prairie Canada, 913.8 thousand western mallards (381.1 and 532.4 thousand respectively in California-Oregon and Alaska) and 815 thousand eastern mallards, the prescribed regulatory choice for all four Flyways is the liberal alternative.

Therefore, we concur with the recommendations of the Atlantic, Mississippi, Central, and Pacific Flyway Councils regarding selection of the ''liberal'' regulatory alternative and propose to adopt the ''liberal'' regulatory alternative, as described in the June 18 **Federal Register**.

Regarding Hunter's Choice, we support continuation of the Central Flyway Council's recommendation for a 3-year evaluation of the Central Flyway's Hunter's Choice duck bag limit. The Central Flyway's Hunter's Choice regulations are intended to limit harvest on pintails and canvasbacks in a manner similar to the season-within-a-season regulations. Hunter's Choice regulations should also reduce harvests of mottled ducks and hen mallards, while maintaining full hunting opportunity on abundant species such as drake mallards. For the species included in the aggregate bag limit, the harvest of one species is intended to ''buffer'' the harvest of the others, thus reducing the harvest of all species included in the one-bird category. The Central Flyway has accumulated 4 years of baseline information on harvests resulting from ''season-within-a-season'' regulations in the Central Flyway; the season length for pintails and canvasbacks in season-within-a-season States under the ''liberal'' alternative will be 39 days.

Five States (Kansas, North Dakota, South Dakota, Texas, and Wyoming)

were randomly assigned to Hunter's Choice regulations and the remaining five States (Colorado, Montana, Nebraska, New Mexico, and Oklahoma) serve as controls (season-within-a-season regulations) as the evaluation proceeds. The overall duck daily bag limit is reduced from six to five for the Hunter's Choice States.

While we continue to support the Central Flyway's Hunter's Choice experiment, we reiterate that we believe implementation of this experiment should not preclude any future changes in hunting regulations that may be deemed necessary on an annual basis for any other duck species in the Central Flyway, if such changes are deemed necessary.

Regarding the Mississippi Flyway Council's opposition to the western mallard AHM protocol, we have cooperated with the Pacific Flyway during the past several years to develop a protocol for managing the harvest of the western stock of mallards. As we discussed above, in July 2008, we formally adopted the western mallard protocol (73 FR 43290). This decision resulted in Alaska mallards being removed from the midcontinent mallard stock and placing them in the western mallard stock. This change resulted in an increase (+7 percent) in the frequency of closed seasons in the Central and Mississippi Flyways under the midcontinent mallard AHM protocol. As we also discussed above, to address this concern, we modified the closed season constraint for midcontinent mallards from 5.25 to 4.75 million mallards.

We recognize the concerns expressed by the Mississippi Flyway Council with regard to implementation of the western mallard protocol. However, we believe that establishment of a western mallard protocol is justified, and we have made an appropriate adjustment to the midcontinent mallard protocol to reduce the impact of removing Alaska from that stock of birds. With regard to potential impacts of higher frequency of liberal seasons in the Pacific Flyway on midcontinent mallards, a preliminary joint optimization of western and midcontinent mallards was assessed. The preliminary analysis suggested that joint optimization does not result in a significant difference in the performance of either protocol. Therefore, we believe an independent harvest strategy for western mallards poses little risk to the midcontinent stock. With regard to the potential impacts of near-permanent liberal regulations in the Pacific Flyway on other species of waterfowl, it is presently unclear how such impacts would be assessed. However, we are committed to monitoring of these potential impacts and will discuss any findings with all of the Flyway Councils prior to implementing any appropriate regulatory changes to address such impacts.

B. Regulatory Alternatives

*Council Recommendations:* The Atlantic Flyway Council recommended that the Service propose a process and time line by June 2009 for review and modification of the regulatory alternatives for implementation by the 2011 season.

*Service Response:* We plan to address this issue within the context of the new Supplemental Environmental Impact Statement (SEIS) for the migratory bird hunting program (see NEPA Consideration for further discussion) and anticipate the issuance of the draft SEIS by the date desired by the Atlantic Flyway Council.

C. Special Seasons/Species Management

iii. Black Ducks

*Council Recommendations:* The Atlantic Flyway Council recommended that black duck harvest regulations remain unchanged for the 2008–09 season.

*Service Response:* In the July 24 **Federal Register** we described the black duck interim harvest strategy developed by U.S. and Canadian waterfowl managers that will be employed by both countries to make regulatory decisions over the next three seasons (2008–09 to 2010–11), allowing time for the development of a formal strategy based on the principles of AHM. The interim harvest strategy is prescriptive, in that it calls for no substantive changes in hunting regulations unless the black duck breeding population, averaged over the most recent 3 years, exceeds or falls below the long-term average breeding population by 15 percent or more. The strategy is designed to share the black duck harvest equally between the two countries; however, recognizing incomplete control of harvest through regulations, it will allow realized harvest in either country to vary between 40 and 60 percent.

The 2008 composite estimate (based on hierarchical modeling and both Service and Canadian Wildlife Service survey data) for the Eastern Survey Area is 683.4 thousand. The 1998–2007 mean estimate is 713.8 thousand and the most recent 3-year running mean estimate is 721.6 thousand. Based on these estimates, we agree with the Atlantic Flyway Council that no restriction or liberalization of harvest is warranted.

iv. Canvasbacks

*Council Recommendations:* The Atlantic Flyway Council recommended a full season for canvasbacks consisting of a 1-bird daily bag limit and a 60-day season in the Atlantic Flyway.

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council reiterated their recommended alternative canvasback harvest management strategy that uses threshold levels based on breeding population size in order to determine bag limits (detailed in the June 18 **Federal Register**). Using their strategy would result in a 1-bird daily bag limit and a 60-day season in the Mississippi Flyway.

The Central Flyway Council, as part of their Hunter's Choice experiment, recommended a full season (74 days) for canvasbacks with a 1-bird daily bag limit in Kansas, North Dakota, South Dakota, Texas, and Wyoming and a 39-day season with a 1-bird daily bag limit in Colorado, Montana, Nebraska, New Mexico, and Oklahoma.

The Pacific Flyway Council recommended a closed season for canvasbacks.

*Service Response:* Since 1994, we have followed a canvasback harvest strategy that if canvasback population status and production are sufficient to permit a harvest of one canvasback per day nationwide for the entire length of the regular duck season, while still attaining a projected spring population objective of 500,000 birds, the season on canvasbacks should be opened. A partial season would be permitted if the estimated allowable harvest was within the projected harvest for a shortened season. If neither of these conditions can be met, the harvest strategy calls for a closed season on canvasbacks nationwide. In the July 24 **Federal Register** we announced our decision to modify the Canvasback Harvest Strategy to incorporate the option for a 2-bird daily bag limit for canvasbacks when the predicted breeding population the subsequent year exceeds 725,000 birds.

This year's spring survey resulted in an estimate of 489,000 canvasbacks. This was 44 percent below the 2007 estimate of 865,000 canvasbacks and 14 percent below the 1955–2007 average. The estimate of ponds in Prairie Canada was 3.06 million, which was 39 percent below last year and 11 percent below the long-term average. According to the Canvasback Harvest Strategy, the allowable harvest in the conterminous United States is 24,700 birds, which is less than the expected harvest in the United States for all four flyways under their respective restrictive season

lengths (61,758 birds). Thus, the Canvasback Harvest Strategy stipulates a canvasback season closure for the upcoming season.

Last year, the estimate of canvasback abundance was a record-high of 865,000 birds. In response to Flyway requests for additional harvest opportunities due to that estimate, we increased the daily bag limit to 2 birds per day. As expected, the harvest of canvasbacks increased last year, but not to the extent that could explain the large decrease in the estimate of canvasback abundance this spring. We have conducted a comprehensive review of canvasback survey information, with a particular focus on the change in estimates between 2007 and 2008. Investigations into the estimation procedures for canvasbacks revealed that numbers of canvasbacks observed during the May survey increased across many survey areas last year, but counts were consistently lower in those same areas this spring. We found no anomalies in the data, leading us to conclude with confidence that the estimate this year is as reliable as previous estimates. Annual canvasback estimates typically have higher variances than for most other species counted during May, and large changes from year-to-year have happened historically. It is possible that the discrepancy between this year's estimate and last year's record-high estimate is purely the result of sampling variation, but other factors may have contributed.

However, we support the completion of the Hunter's Choice experiment in the Central Flyway. For the last 2 years, the average harvest of canvasbacks in the U.S. portion of the Central Flyway has been about 14,800 birds. This, together with the average expected harvest in Alaska (350 birds), is below the allowable U.S. harvest resulting from the strategy this year. Thus, we propose that the States in the Central Flyway be allowed an open season on canvasbacks this year according to the Hunter's Choice experimental design, but the seasons on canvasbacks would be closed in the Atlantic, Mississippi, and Pacific Flyways.

v. Pintails

*Council Recommendations:* The Atlantic and Pacific Flyway Councils and the Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended a full season for pintails consisting of a 1-bird daily bag limit and a 60-day season in the Atlantic and Mississippi Flyways, and a 107-day season in the Pacific Flyway.

The Central Flyway Council, as part of their Hunter's Choice experiment, recommended a full season (74 days) for pintails with a 1-bird daily bag limit in Kansas, North Dakota, South Dakota, Texas, and Wyoming and a 39-day season with a 1-bird daily bag limit in Colorado, Montana, Nebraska, New Mexico, and Oklahoma.

*Service Response:* Based on the current strategy, along with an observed spring breeding population of 2.61 million, an overflight-bias-corrected breeding population of 4.24 million and a projected fall flight of 4.47 million pintails, the Pintail Harvest Strategy prescribes a full season and a 1-bird bag in all Flyways. Under the ''liberal'' season length, this regulation is expected to result in a harvest of 569,000 pintails and an observed breeding population estimate of 3.53 million in 2009, not considering any potential effect from continuation of the Hunter's Choice evaluation in the Central Flyway.

Furthermore, we agree with the Central Flyway Council's recommendation to adopt a 39-day ''season-within-a-season'' for pintails in Colorado, Montana, Nebraska, New Mexico, and Oklahoma. We understand that this departure from the pintail strategy is a necessary part of the experimental ''Hunter's Choice'' season.

vi. Scaup

*Council Recommendations:* The Atlantic Flyway Council recommended that the following regulatory packages for scaup be allowed for the Atlantic Flyway for the next 3 years and that we use their harvest prediction methodology to predict scaup harvests in the Atlantic Flyway:

(1) Under the restrictive harvest policy, a 40-day season with a 1-bird daily bag and a 20-day season with a 2-bird daily bag. The 20 days with the 2-bird daily bag shall be 20 consecutive hunting days;

(2) Under the moderate harvest policy, a 60-day season with a 2-bird daily bag; and

(3) Under the liberal harvest policy, a 60-day season with a 4-bird daily bag.

For 2008–09, the Council recommended implementation of the restrictive season package, based on results of the scaup harvest model.

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended a 60-day season with a 2-bird daily bag limit for the 2008–09 season. They further recommended a restrictive and moderate regulatory package of 60 days with a 2-bird daily bag limit and a liberal regulatory package of 60 days with a 4-bird daily bag limit.

The Central Flyway Council recommended the continuation of the Hunter's Choice bag limit for the 2008–09 season. After completion of the Hunter's Choice experiment, the Central Flyway Council recommends the following potential scaup regulatory alternatives (season lengths and daily bag limits) for Central Flyway States:

(1) Restrictive Policy—74 days with a 1-bird daily bag limit;

(2) Moderate Policy—74 days with a 2-bird daily bag limit; and

(3) Liberal Policy—74 days with a 6-bird daily bag limit.

The Pacific Flyway Council recommended the adoption of the following scaup regulation packages for the Pacific Flyway for the next three years:

(1) Restrictive season package: 86 days, 2 bag limit.

(2) Moderate season package: 86 days, 3 bag limit.

(3) Liberal season package: 107 days, 7 bag limit.

In addition, the Pacific Flyway Council requested that split and zone configurations be available to individual States for scaup seasons, similar to the split and zone options we previously provided for pintail seasons. For 2008–09, the Council recommended implementation of the restrictive season package, based on results of the scaup harvest model.

*Service Response:* As we have stated over the last several years, the continental scaup (greater *Aythya marila* and lesser *Aythya affinis* combined) population has experienced a long-term decline over the past 20 years. Over the past several years in particular, we have continued to express our growing concern about the status of scaup (see the May 28 **Federal Register** for a review of the actions we have taken over the last few years to synthesize data relevant to scaup harvest management and frame a scientifically-sound scaup harvest strategy or for a complete list of reports see *http://www.fws.gov/migratorybirds/reports/reports.html*).

In the July 24 **Federal Register**, we adopted a scaup harvest strategy that resulted from three years of development and review in cooperation with the Flyway Councils. The 2008 scaup breeding population estimate was 3.74 million. Total estimated scaup harvest in 2007–08 was 295,000. Employing these estimates as the input to the scaup harvest strategy, the optimal harvest for the 2008–09 hunting season is 200,000 (including the 40,000 scaup harvest expected in Canada and

Alaska). The available harvest results in a recommendation for a restrictive package in all four Flyways (except Alaska).

We appreciate the time and attention that the Flyways have given this issue. We further support the recommendations received from the Atlantic, Central and Pacific Flyways for their restrictive, moderate and liberal packages for scaup. We also support the packages recommended by the Mississippi Flyway for their moderate and liberal packages. However, the restrictive package recommended by the Mississippi Flyway is not projected to be sufficient to achieve the required harvest reductions. In further consultation with the Mississippi Flyway Consultants, we accepted the same season structure recommended by the Atlantic Flyway for restrictive seasons in the Mississippi Flyway. These season structures will be used for the next three years and evaluated at the end of that period.

In addition, we have adopted the alternative harvest prediction models suggested by the Atlantic and Central Flyways. We also support the proposal by the Pacific Flyway to afford States the opportunity to use their existing zone/split rules for their respective States when choosing scaup season frameworks.

vii. Mottled Ducks

*Council Recommendations:* The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended continuation of a 60-day season and a 3-bird daily bag limit for mottled ducks for the 2008–09 waterfowl season. They further recommended that given adequate justification for a 30 percent reduction in harvest, and no further analyses of effects of harvest regulations on mottled duck harvests sometime in the future, the following:

(a) Season length of 45 days with a daily bag limit of 1 per day in years when AHM prescribes a liberal or moderate regulations package.

(b) Season length of 30 days with a daily bag limit of 2 per day in years when AHM prescribes a restrictive regulations package.

(c) Outside the mottled duck breeding range, mottled duck season length and bag limits would be the same as for hen mallards.

The Central Flyway Council recommended that no further harvest reductions were warranted at this time.

*Service Response:* We are not proposing any changes to mottled duck regulations for the 2008–09 season. Because of our long-standing concern about the status of mottled ducks, we are encouraged by the progress made to date on improving population monitoring programs for this species in the Gulf Coast region. We look forward to working with the Flyways on continued development of such surveys. Further, we appreciate the Mississippi Flyway Council's recommendations on potential regulatory packages that could serve to reduce harvest pressure on mottled ducks if deemed necessary at some future date. We will take under consideration the Council's recommendation regarding regulations in areas outside the mottled duck breeding range. We also recognize that the Central Flyway Council has taken voluntary restrictions in mottled duck regulations in the past and, together with reductions in harvest resulting from the Hunter's Choice experiment, has reduced harvest pressure on mottled ducks, primarily in Texas.

viii. Wood Ducks

*Council Recommendations:* The Atlantic and Central Flyway Councils and the Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that the wood duck bag limit in the Atlantic, Mississippi, and Central Flyways be increased to 3 birds per day during the regular duck season for an experimental 3-year period beginning in 2008.

*Service Response:* We support the proposal to increase the daily bag limit for wood ducks from 2 to 3 birds in the Atlantic, Mississippi, and Central Flyways beginning in 2008. We do not, however, believe that this change warrants an experiment because the assessment work that justifies the bag limit increase has already been done. However, we recognize the importance of maintaining the current wood duck banding effort that is needed to assess the effects of the change. Further, we look forward to continuing involvement by the Flyways in developing a wood duck harvest strategy, including (1) determining specific harvest management objectives; (2) determining regulatory alternatives; (3) designation of and support for appropriate population monitoring programs; and (4) designation of the appropriate test criteria for making management decisions. We would like the Flyways to develop this strategy for implementation during the 2010–2011 hunting season.

viii. Youth Hunt

*Council Recommendations:* The Atlantic Flyway Council recommended that the Service allow States to select any two weekend days, holidays or other non-school days for their youth waterfowl hunting days.

*Service Response:* We do not support the Atlantic Flyway's proposal to allow the selection of any two weekend days, holidays, or other non-school days for their youth waterfowl hunting days. In 2000, we expanded the special youth waterfowl hunt to two consecutive days in order to reduce travel and scheduling conflicts for youth hunt participants—issues identified by the Flyways as problems with promoting participation under the original 1-day youth hunt guidelines (65 FR 51496). The following year, we further supported a change to two consecutive hunting days to address the inability of some States in the Atlantic Flyway to hunt on Sundays (66 FR 44010). As we stated in 2003 when presented with a similar proposal by the Atlantic Flyway, we believe the proposal is inconsistent with the original purpose put forth by the Flyway Councils in 2000 to facilitate travel and scheduling of youth hunt participants (68 FR 51658).

*4. Canada Geese*

B. Regular Seasons

*Council Recommendations:* The Atlantic Flyway Council forwarded a number of recommendations concerning Canada geese. First, the Council recommended that we modify the existing criteria for delineation of Atlantic Flyway Resident Population (AFRP) Canada goose hunting zones in the Atlantic Flyway by proposing that AFRP hunting zones may not contain more than 10 percent of all Atlantic Population (AP) band recoveries, or more than 10 percent of all North Atlantic Population (NAP) recoveries, within a State from 2002–2007.

Second, the Council recommended that we adopt the following criteria for evaluation of AFRP hunting zones in the Atlantic Flyway during 2008–2010:

(1) All areas holding an AFRP regular season must collectively account for no more than a 1 percent direct recovery rate for adults for any migrant goose population during the open AFRP regular seasons. Areas contributing disproportionately to the cumulative recovery rate will be identified and these areas may be eliminated to stay below the 1 percent threshold;

(2) AFRP hunting zones must not account for more than 10 percent of all AP band recoveries, or more than 10 percent of all NAP recoveries, in any State during the 3-year period 2008–2010;

(3) If a season is closed for any migrant population, AFRP hunting zones would remain open as long as

they do not result in exceeding the cumulative 1 percent adult recovery rate threshold; and

(4) Band recovery data will be examined annually, and at 3-year intervals all available data will be examined to determine if zone modifications and/or changes to opening and closing framework dates are needed to ensure continued compliance with the above criteria.

As a result of the above delineation criteria modifications, the Council recommended modifications to existing AFRP hunting zones in New York, Pennsylvania, and Maryland beginning in 2008, and that we extend the opening and closing framework dates for Canada geese in AFRP harvest zones in Pennsylvania (from the fourth Saturday in October to March 10), Maryland and Virginia (from November 15 to March 10), and North Carolina (from October 1 to March 10). They also recommended allowing Connecticut and New York to establish new AFRP harvest zones with framework dates between 1 October and 15 February and bag limits of 5 geese per day.

With regard to frameworks in Southern James Bay Population (SJBP) harvest zones, the Council recommended allowing Pennsylvania a 70-day Canada goose hunting season, with a 3-bird daily bag limit, between the second Saturday in October and February 15; Virginia, a 40-day season between November 15 and January 14 with a 3-bird daily bag limit and an experimental season between January 15-February 15 with a 5-bird daily bag limit; and North Carolina a 70-day season with a 5-bird daily bag limit between October 1 and December 31. In addition, they recommended modifying the SJBP harvest zone in Pennsylvania to include the former Pymatuning Zone and that portion of Mercer, Crawford and Erie Counties north of Interstate 80 and west of Interstate 79 including Lake Erie, Presque Isle, and the area within 150 yards of the Lake Erie shoreline.

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended a number of changes in Canada goose zones, seasons lengths, and bag limits for several States in the Flyway. These changes are a result of approved revisions to the Southern James Bay Population (SJBP) Canada goose harvest strategy and management plan that were made in agreement with the Atlantic Flyway. These changes are consistent with the revised harvest strategies for Canada geese in the Mississippi Flyway.

The Pacific Flyway Council recommended revising Idaho zone designations for 2 counties (Adams and Valley Counties from Zone 2 to Zone 1), and reducing the bag limit on dark geese in Wyoming from 4 to 3 geese.

*Service Response:* We concur with the Atlantic Flyway Council's recommendations to modify existing criteria for delineation and subsequent evaluation of AFRP hunting zones. Evaluations of AFRP seasons since 2002 have demonstrated that these seasons have met the established criteria of less than a 1 percent direct recovery rate of migrant geese. We note that a migrant (AP, NAP, SJBP) direct recovery rate of 0.35 percent was realized for the 2005–2007 period. AFRP zones have resulted in higher hunter opportunity and higher AFRP goose harvests, and current North Atlantic Population Canada Goose Low Harvest zones have shown to be effective in minimizing NAP harvest. The Atlantic Flyway Council's proposed modification to allow certain portions of existing NAP Harvest zones to become AFRP zones will allow for greater harvest opportunity on AFRP geese while further protecting NAP stocks. Current direct recovery rates of NAP geese in the United States are 2.9 percent, equating to a harvest rate of <6 percent. As band return data accumulate, adjustments to existing AFRP zones and establishment of new zones should utilize these data. We will continue to evaluate these AFRP seasons annually through leg band recoveries and at 3-year intervals a comprehensive evaluation of all available data will occur to ensure compliance with established criteria. Lastly, we note that these proposed modifications for delineation of new AFRP zones in certain portions of existing NAP harvest zones are in accordance with the current North Atlantic Population Canada Goose Management Plan.

We also concur with the Atlantic Flyway Council's recommendations to modify AFRP hunting zones in Maryland, New York, and Pennsylvania, establish new AFRP zones in Connecticut and Long Island, New York, and modify the AFRP zone season opening and closing framework dates in Maryland, North Carolina, Pennsylvania, and Virginia. These recommended changes all conform to the existing criteria, as amended above, for delineating AFRP hunting zones and establishing AFRP season framework dates. We further note that resident Canada geese are overabundant in many areas of the Atlantic Flyway and currently number approximately 1.0 million birds, significantly above the goal in the Atlantic Flyway Resident Canada Goose Management Plan of 650,000 geese. All of the Flyway's objectives to increase the harvest of resident Canada geese are consistent with those identified in the Service's 2005 Final Environmental Impact Statement on Resident Canada Goose Management (70 FR 69985, November 18, 2005).

We also concur with the Atlantic Flyway Council's recommended frameworks for the SJBP harvest zones in the Atlantic Flyway. We note that the SJBP Management Plan was recently revised and approved by both the Atlantic and Mississippi Flyway Councils and guides management decisions in both flyways. The plan goal is to maintain the SJBP at a level that can sustain use throughout its current range, while allowing for the management of resident Canada geese. A key part of the plan is a harvest strategy designed to test the resident Canada goose buffering hypothesis. This hypothesis states that large populations of resident Canada geese are now buffering the harvest of SJBP geese, and therefore liberalization in hunting regulations will result in more harvest of resident Canada geese, and not SJBP Canada geese. Further, genetic studies and analysis of band recoveries indicate SJBP harvest zones in many States no longer function as concentration zones for SJBP geese and may therefore be ineffective at protecting SJBP geese. We agree that these reductions in hunting opportunity and hunting pressure on resident Canada geese may not be warranted when many SJBP harvest zones hold a smaller proportion of SJBP geese than they did historically. The newly revised SJBP plan also calls for holding regulations stable for a 5-year period (2008–2013). If the spring population estimate falls below 50,000 in combination with either an unabated negative trend in the estimate over 3 years or more, and evidence of unsustainable harvest rates, then appropriate regulation changes will be implemented as/when necessary in both the Atlantic and Mississippi Flyways. We believe that these proposed regulation changes will provide for increased hunting opportunity and harvest of AFRP geese, while maintaining the SJBP at levels identified in the 2008 plan.

We also concur with all of the recommendations forwarded by the Pacific Flyway Council. Some of these changes are designed to afford greater protection to Tule white-fronted geese and the Service strongly supports these efforts (see discussion under 5. White-fronted Geese). In addition, the other changes in Canada goose seasons are relatively minor and are being

undertaken for administrative reasons and are not expected to impact populations.

*5. White-fronted Geese*

*Council Recommendations:* The Pacific Flyway Council recommended the following area, bag, and season length changes described below:

(1) In the Lake County portion of the Harney, Lake, and Malheur County Zone reduce the daily bag limit for white-fronted geese from 2 to 1;

(2) In the Klamath County Zone of Oregon, for hunting days occurring after the last Sunday in January, change the daily bag limit of 2 white-fronted geese to a bag limit of 1 white-fronted goose and 3 white geese; and

(3) Reduce the bag limit on dark geese in Wyoming from 4 to 3 geese.

*Service Response:* We concur with the proposed changes in goose frameworks proposed by the Pacific Flyway Council. In general, these changes are designed to afford greater protection to Tule white-fronted geese and we strongly support these efforts. Tule greater white-fronted geese continue to be of concern because of low population numbers. In Oregon, Tule white-fronted geese are predominantly encountered in Lake County where the bag limit for white-fronted geese has been two for some time. Because of the continued concern for Tule geese, and uncertainty about their true population size, we agree with the Pacific Flyway Council that a reduction in harvest is warranted. This proposed change will keep Tule goose harvest in Oregon at minimum levels and support ongoing research efforts to assess population status.

We note, however, that indices to the Pacific population of white-fronted geese exceed management plan goals and this population is responsible for numerous agricultural depredation complaints in the Klamath Basin as well. However, given the concerns over the status of population of Tule white-fronted geese, which, as documented through telemetry observations, are present in at least very low numbers in the Oregon portion of the Klamath Basin during this time period, further assessment is warranted.

*6. Brant*

*Council Recommendations:* The Atlantic Flyway Council recommends a 60-day season with a 3-bird daily bag limit for Atlantic brant.

*Service Response:* We concur with the Atlantic Flyway Council's recommendation. The 2008 Mid-Winter Index (MWI) for Atlantic brant was 160,618 brant. The Brant Management Plan prescribes a 60-day season with a 3-bird daily bag limit when the MWI estimate is above 150,000 and productivity and food supplies are deemed sufficient to sustain additional harvest opportunity. We note that productivity for 2008 looks very good on the main breeding grounds and that productivity in 2007 was good, with approximately 28–31 percent young in the fall productivity surveys. Thus, we agree with the Council that an increase of 10 days with the associated daily bag limit increase is the proper approach for the upcoming season.

*7. Snow and Ross's (Light) Geese*

*Council Recommendations:* The Pacific Flyway Council recommended several area, bag, and season length changes for light geese:

(1) In the States of California, Oregon, and Washington increase the light goose season length to 107 days, and in the States of California and Oregon increase the bag limit to 6 light geese per day and extend the light goose framework ending date to March 10;

(2) Increase the bag limit to 10 light geese per day in all other states of the Pacific Flyway with a framework ending date of March 10; and

(3) In the Klamath County Zone of Oregon, for hunting days occurring after the last Sunday in January, change the daily bag limit of 2 white-fronted geese to a bag limit of 1 white-fronted goose and 3 white geese.

*Service Response:* We support the proposed changes for light geese in the Pacific Flyway. Last year the Flyway's December goose count exceeded 1 million for the first time, representing a doubling of this index since 1999. Light goose indices (Snow and Ross' geese combined) indicate that all recognized populations currently exceed management plan goals. In some areas of the Pacific Flyway, these goose populations are leading to increasing depredation complaints. In addition, numbers of light geese breeding on Wrangle Island, Russia, a colony that has been of concern in the past, has recovered to near record levels in the past few years. We support efforts to increase harvest of these geese in aid of limiting further population growth and perhaps avoiding the overabundance problems associated with the species that have been documented in several of the mid-continent region.

## Public Comments

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations. Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments received. Such comments, and any additional information received, may lead to final regulations that differ from these proposals.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not consider comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section. Finally, we will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the **DATES** section.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov*. If you provide personal identifying information in your comment, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Division of Migratory Bird Management, Room 4107, 4501 North Fairfax Drive, Arlington, VA 22203.

For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. As in the past, we will summarize all comments received during the comment period and respond to them after the closing date in any final rules.

## NEPA Consideration

NEPA considerations are covered by the programmatic document ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with the Environmental Protection Agency on June 9, 1988. We published a notice of availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment entitled ''Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands'' is available from the address indicated

under the caption **FOR FURTHER INFORMATION CONTACT**.

In a notice published in the September 8, 2005 **Federal Register** (70 FR 53376), we announced our intent to develop a new Supplemental Environmental Impact Statement for the migratory bird hunting program. Public scoping meetings were held in the spring of 2006, as detailed in a March 9, 2006 **Federal Register** (71 FR 12216). We have prepared a scoping report summarizing the scoping comments and scoping meetings. The report is available by either writing to the address indicated under **FOR FURTHER INFORMATION CONTACT** or by viewing on our Web site at *http://www.fws.gov/migratorybirds*.

**Endangered Species Act Consideration**

Prior to issuance of the 2008–09 migratory game bird hunting regulations, we will comply with provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543; hereinafter, the Act), to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened, or modify or destroy its critical habitat, and is consistent with conservation programs for those species. Consultations under section 7 of this Act may cause us to change proposals in this and future supplemental rulemaking documents.

**Executive Order 12866**

The Office of Management and Budget has determined that this rule is significant and has reviewed this rule under Executive Order 12866. OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

**Clarity of the Rule**

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

**Regulatory Flexibility Act**

The regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis discussed under Executive Order 12866. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, 2004, and 2008. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2008 Analysis was based on the 2006 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend approximately $1.2 billion at small businesses in 2008. Copies of the Analysis are available upon request from the address indicated under **FOR FURTHER INFORMATION CONTACT** or from our Web site at *http://www.fws.gov/migratorybirds/reports/reports.html* or at *http://www.regulations.gov.*

**Small Business Regulatory Enforcement Fairness Act**

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

**Paperwork Reduction Act**

We examined these regulations under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of our Migratory Bird Surveys and assigned control number 1018–0023 (expires 2/28/2011). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Alaska Subsistence Household Survey, an associated voluntary annual household survey used to determine levels of subsistence take in Alaska, and assigned control number 1018–0124 (expires 1/31/2010). A Federal 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.

**Unfunded Mandates Reform Act**

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

**Civil Justice Reform—Executive Order 12988**

The Department, in promulgating this proposed rule, has determined that this proposed rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

**Takings Implication Assessment**

In accordance with Executive Order 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

**Energy Effects—Executive Order 13211**

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this proposed rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

**Federalism Effects**

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or Indian tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**List of Subjects in 50 CFR Part 20**

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2008–09 hunting season are authorized under 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

Dated: August 25, 2008.

**David M. Verhey,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

**Proposed Regulations Frameworks for 2008–09 Late Hunting Seasons on Certain Migratory Game Birds**

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department has approved frameworks for season lengths, shooting hours, bag and possession limits, and outside dates within which States may select seasons for hunting waterfowl and coots between the dates of September 1, 2008, and March 10, 2009.

**General**

*Dates:* All outside dates noted below are inclusive.

*Shooting and Hawking (taking by falconry) Hours:* Unless otherwise specified, from one-half hour before sunrise to sunset daily.

*Possession Limits:* Unless otherwise specified, possession limits are twice the daily bag limit.

**Flyways and Management Units**

*Waterfowl Flyways*

*Atlantic Flyway*—includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

*Mississippi Flyway*—includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

*Central Flyway*—includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

*Pacific Flyway*—includes Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and those portions of Colorado, Montana, New Mexico, and Wyoming not included in the Central Flyway.

**Management Units**

*High Plains Mallard Management Unit*—roughly defined as that portion of the Central Flyway that lies west of the 100th meridian.

*Definitions:* For the purpose of hunting regulations listed below, the collective terms ''dark'' and ''light'' geese include the following species:

*Dark geese:* Canada geese, white-fronted geese, brant (except in California, Oregon, Washington, and the Atlantic Flyway), and all other goose species except light geese.

*Light geese:* snow (including blue) geese and Ross' geese.

*Area, Zone, and Unit Descriptions:* Geographic descriptions related to late-season regulations are contained in a later portion of this document.

*Area-Specific Provisions:* Frameworks for open seasons, season lengths, bag and possession limits, and other special provisions are listed below by Flyway.

**Waterfowl Seasons in the Atlantic Flyway**

In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, and Virginia, where Sunday hunting is prohibited statewide by State law, all Sundays are closed to all take of migratory waterfowl (including mergansers and coots).

**Special Youth Waterfowl Hunting Days**

*Outside Dates:* States may select two consecutive days (hunting days in Atlantic Flyway States with compensatory days) per duck-hunting zone, designated as ''Youth Waterfowl Hunting Days,'' in addition to their regular duck seasons. The days must be held outside any regular duck season on a weekend, holiday, or other non-school day when youth hunters would have the maximum opportunity to participate. The days may be held up to 14 days before or after any regular duck-season frameworks or within any split of a regular duck season, or within any other open season on migratory birds.

*Daily Bag Limits:* The daily bag limits may include ducks, geese, tundra swans, mergansers, coots, moorhens, and gallinules and would be the same as those allowed in the regular season. Flyway species and area restrictions would remain in effect.

*Shooting Hours:* One-half hour before sunrise to sunset.

*Participation Restrictions:* Youth hunters must be 15 years of age or younger. In addition, an adult at least 18 years of age must accompany the youth hunter into the field. This adult may not duck hunt but may participate in other seasons that are open on the special youth day. Tundra swans may only be taken by participants possessing applicable tundra swan permits.

**Atlantic Flyway**

*Ducks, Mergansers, and Coots*

*Outside Dates:* Between the Saturday nearest September 24 (September 27) and the last Sunday in January (January 25).

*Hunting Seasons and Duck Limits:* 60 days. The daily bag limit is 6 ducks, including no more than 4 mallards (2 hens), 1 black duck, 1 pintail, 1 mottled duck, 1 fulvous whistling duck, 3 wood ducks, 2 redheads, and 4 scoters. For scaup, the daily bag limit may be 2 for up to 20 consecutive hunting days, which may be split according to applicable zones/split duck hunting configurations approved for each State, and 1 for the remainder of the season. A daily bag limit of 2 scaup may also be included in the 6-bird daily bag limit for designated youth-hunt days.

*Closures:* The season on canvasbacks and harlequin ducks is closed.

*Sea Ducks:* Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and are part of the regular duck season daily bag (not to exceed 4 scoters) and possession limits.

*Merganser Limits:* The daily bag limit of mergansers is 5, only 2 of which may be hooded mergansers. In States that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, only 2 of which may be hooded mergansers.

*Coot Limits:* The daily bag limit is 15 coots.

*Lake Champlain Zone, New York:* The waterfowl seasons, limits, and shooting hours shall be the same as those selected for the Lake Champlain Zone of Vermont.

*Connecticut River Zone, Vermont:* The waterfowl seasons, limits, and shooting hours shall be the same as those selected for the Inland Zone of New Hampshire.

*Zoning and Split Seasons:* Delaware, Florida, Georgia, Maryland, North Carolina, Rhode Island, South Carolina, and Virginia may split their seasons into three segments; Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Vermont, and West Virginia may select hunting seasons by zones and may split their seasons into two segments in each zone.

**Canada Geese**

*Season Lengths, Outside Dates, and Limits:* Specific regulations for Canada geese are shown below by State. These seasons also include white-fronted geese. Unless specified otherwise, seasons may be split into two segments. In areas within States where the framework closing date for Atlantic Population (AP) goose seasons overlaps with special late-season frameworks for resident geese, the framework closing date for AP goose seasons is January 14.

*Connecticut:*

*North Atlantic Population (NAP) Zone:* Between October 1 and January 31, a 60-day season may be held with a 2-bird daily bag limit.

*Atlantic Population (AP) Zone:* A 45-day season may be held between the fourth Saturday in October (October 25) and January 31, with a 3-bird daily bag limit.

*South Zone:* A special season may be held between January 15 and February 15, with a 5-bird daily bag limit.

*Resident Population (RP) Zone:* An 80-day season may be held between October 1 and February 15, with a 5-bird daily bag limit. The season may be split into 3 segments.

*Delaware:* A 45-day season may be held between November 15 and January 31, with a 2-bird daily bag limit.

*Florida:* An 80-day season may be held between November 15 and February 15, with a 5-bird daily bag limit. The season may be split into 3 segments.

*Georgia:* In specific areas, an 80-day season may be held between November 15 and February 15, with a 5-bird daily bag limit. The season may be split into 3 segments.

*Maine:* A 60-day season may be held statewide between October 1 and January 31, with a 2-bird daily bag limit.

*Maryland:*

*RP Zone:* An 80-day season may be held between November 15 and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments.

*AP Zone:* A 45-day season may be held between November 15 and January 31, with a 2-bird daily bag limit.

*Massachusetts:*

*NAP Zone:* A 60-day season may be held between October 1 and January 31, with a 2-bird daily bag limit. Additionally, a special season may be held from January 15 to February 15, with a 5-bird daily bag limit.

*AP Zone:* A 45-day season may be held between October 20 and January 31, with a 3-bird daily bag limit.

*New Hampshire:* A 60-day season may be held statewide between October 1 and January 31, with a 2-bird daily bag limit.

*New Jersey:*

*Statewide:* A 45-day season may be held between the fourth Saturday in October (October 25) and January 31, with a 3-bird daily bag limit.

*Special Late Goose Season Area:* An experimental season may be held in designated areas of North and South New Jersey from January 15 to February 15, with a 5-bird daily bag limit.

*New York:*

*NAP Zone:* Between October 1 and January 31, a 60-day season may be held, with a 2-bird daily bag limit in the High Harvest areas; and between October 1 and February 15, a 70-day season may be held, with a 3-bird daily bag limit in the Low Harvest areas.

*Special Late Goose Season Area:* An experimental season may be held between January 15 and February 15, with a 5-bird daily bag limit in designated areas of Chemung, Delaware, Tioga, Broome, Sullivan, Westchester, Nassau, Suffolk, Orange, Dutchess, Putnam, and Rockland Counties.

*AP Zone:* A 45-day season may be held between the fourth Saturday in October (October 25), except in the Lake Champlain Area where the opening date is October 20, and January 31, with a 3-bird daily bag limit.

*Western Long Island RP Zone:* An 80-day season may be held between October 1 and February 15, with a 5-bird daily bag limit. The season may be split into 3 segments.

*Rest of State RP Zone:* An 80-day season may be held between the fourth Saturday in October (October 25) and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments.

*North Carolina:*

*SJBP Zone:* A 70-day season may be held between October 1 and December 31, with a 5-bird daily bag limit.

*RP Zone:* An 80-day season may be held between October 1 and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments.

*Northeast Hunt Unit:* A 30-day experimental season (1,000 permits) may be held concurrent with the season selected for the Back Bay Area of Virginia. The seasonal bag limit is 1 bird.

*Pennsylvania:*

*SJBP Zone:* A 70-day season may be held between the second Saturday in October (October 11) and February 15.

*RP Zone:* An 80-day season may be held between the fourth Saturday in October (October 25) and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments.

*AP Zone:* A 45-day season may be held between the fourth Saturday in October (October 25) and January 31, with a 3-bird daily bag limit.

*Rhode Island:* A 60-day season may be held between October 1 and January

31, with a 2-bird daily bag limit. An experimental season may be held in designated areas from January 15 to February 15, with a 5-bird daily bag limit.

*South Carolina:* In designated areas, an 80-day season may be held during November 15 to February 15, with a 5-bird daily bag limit. The season may be split into 3 segments.

*Vermont:* A 45-day season may be held between the fourth Saturday in October (October 25), except in the Lake Champlain Zone and Interior Zone where the opening date is October 20, and January 31, with a 3-bird daily bag limit.

*Virginia:*

*SJBP Zone:* A 40-day season may be held between November 15 and January 14, with a 3-bird daily bag limit. Additionally, an experimental season may be held between January 15 and February 15, with a 5-bird daily bag limit.

*AP Zone:* A 45-day season may be held between November 15 and January 31, with a 2-bird daily bag limit.

*RP Zone:* An 80-day season may be held between November 15 and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments.

*Back Bay Area:* A 30-day experimental season may be held between December 22 and January 24 in the AP Zone, with a 2-bird daily bag limit.

*West Virginia:* An 80-day season may be held between October 1 and January 31, with a 5-bird daily bag limit. The season may be split into 2 segments in each zone.

**Light Geese**

*Season Lengths, Outside Dates, and Limits:* States may select a 107-day season between October 1 and March 10, with a 15-bird daily bag limit and no possession limit. States may split their seasons into 3 segments, except in Delaware and Maryland, where, following the completion of their duck season, and until March 10, Delaware and Maryland may split the remaining portion of the season to allow hunting on Mondays, Wednesdays, Fridays, and Saturdays only.

**Brant**

*Season Lengths, Outside Dates, and Limits:* States may select a 60-day season between the Saturday nearest September 24 (September 27) and January 31, with a 3-bird daily bag limit. States may split their seasons into 2 segments.

**Mississippi Flyway**

*Ducks, Mergansers, and Coots*

*Outside Dates:* Between the Saturday nearest September 24 (September 27) and the last Sunday in January (January 25).

*Hunting Seasons and Duck Limits:* The season may not exceed 60 days, with a daily bag limit of 6 ducks, including no more than 4 mallards (no more than 2 of which may be females), 3 mottled ducks, 1 black duck, 1 pintail, 3 wood ducks, and 2 redheads. For scaup, the daily bag limit may be 2 for up to 20 consecutive hunting days, which may be split according to applicable zones/split duck hunting configurations approved for each State, and 1 for the remainder of the season. The season for canvasbacks is closed. A daily bag limit of 2 scaup may also be included in the 6-bird daily bag limit for designated youth-hunt days.

*Merganser Limits:* The daily bag limit is 5, only 2 of which may be hooded mergansers. In States that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, only 2 of which may be hooded mergansers.

*Coot Limits:* The daily bag limit is 15 coots.

*Zoning and Split Seasons:* Alabama, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Missouri, Ohio, Tennessee, and Wisconsin may select hunting seasons by zones.

In Alabama, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Ohio, Tennessee, and Wisconsin, the season may be split into 2 segments in each zone.

In Arkansas and Mississippi, the season may be split into 3 segments.

**Geese**

*Split Seasons:* Seasons for geese may be split into 3 segments.

*Season Lengths, Outside Dates, and Limits:* States may select seasons for light geese not to exceed 107 days, with 20 geese daily between the Saturday nearest September 24 (September 27) and March 10; for white-fronted geese not to exceed 72 days with 2 geese daily or 86 days with 1 goose daily between the Saturday nearest September 24 (September 27) and the Sunday nearest February 15 (February 15); and for brant not to exceed 70 days, with 2 brant daily or 107 days with 1 brant daily between the Saturday nearest September 24 (September 27) and January 31. There is no possession limit for light geese. Specific regulations for Canada geese and exceptions to the above general provisions are shown below by State. Except as noted below, the outside dates for Canada geese are the Saturday nearest September 24 (September 27) and January 31.

*Alabama:* In the SJBP Goose Zone, the season for Canada geese may not exceed 70 days. Elsewhere, the season for Canada geese may extend for 70 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese.

*Arkansas:* In the Northwest Zone, the season for Canada geese may extend for 50 days. In the remainder of the State, the season may not exceed 40 days. The season may extend to February 15. The daily bag limit is 2 Canada geese.

*Illinois:* The season for Canada geese may extend for 85 days in the North and Central Zones and 66 days in the South Zone. The daily bag limit is 2 Canada geese.

*Indiana:* The season for Canada geese may extend for 74 days. The daily bag limit is 2 Canada geese.

*Late Canada Goose Season Zone*—an experimental special Canada goose season of up to 15 days may be held during February 1–15. During this special season the daily bag limit cannot exceed 5 Canada geese.

*Iowa:* The season for Canada geese may extend for 90 days. The daily bag limit is 2 Canada geese.

*Kentucky:*

(a) *Western Zone*—The season for Canada geese may extend for 70 days (85 days in Fulton County). The season in Fulton County may extend to February 15. The daily bag limit is 2 Canada geese.

(b) *Pennyroyal/Coalfield Zone*—The season may extend for 70 days. The daily bag limit is 2 Canada geese.

(c) *Remainder of the State*—The season may extend for 70 days. The daily bag limit is 2 Canada geese.

*Louisiana:* The season for Canada geese may extend for 16 days. During the season, the daily bag limit is 1 Canada goose and 2 white-fronted geese with a 72-day white-fronted goose season or 1 white-fronted goose with an 86-day season. Hunters participating in the Canada goose season must possess a special permit issued by the State.

*Michigan:*

(a) *North Zone*—The framework opening date for all geese is September 16 and the season for Canada geese may extend for 45 days. The daily bag limit is 2 Canada geese.

(b) *Middle Zone*—The framework opening date for all geese is September 16 and the season for Canada geese may extend for 45 days. The daily bag limit is 2 Canada geese.

(c) *South Zone*—The framework opening date for all geese is September 16 and the season for Canada geese may

extend for 45 days. The daily bag limit is 2 Canada geese.

(1) *Allegan County and Muskegon Wastewater GMU*—The framework opening date for all geese is September 16 and the season for Canada geese may extend for 45 days. The daily bag limit is 2 Canada geese.

(3) *Saginaw County and Tuscola/Huron GMUs*—The framework opening date for all geese is September 16 and the season for Canada geese may extend for 45 days through December 30 and an additional 30 days may be held between December 31 and February 7. The daily bag limit is 2 Canada geese.

(d) *Southern Michigan Late Season Canada Goose Zone*—A 30-day special Canada goose season may be held between December 31 and February 7. The daily bag limit may not exceed 5 Canada geese.

*Minnesota:*

(a) West Zone.

(1) *West Central Zone*—The season for Canada geese may extend for 41 days. The daily bag limit is 2 Canada geese.

(2) *Remainder of West Zone*—The season for Canada geese may extend for 60 days. The daily bag limit is 2 Canada geese.

(b) *Remainder of the State*—The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese.

(c) *Special Late Canada Goose Season*—A special Canada goose season of up to 10 days may be held in December, except in the West Central Goose zone. During the special season, the daily bag limit is 5 Canada geese, except in the Southeast Goose Zone, where the daily bag limit is 2.

*Mississippi:* The season for Canada geese may extend for 70 days. The daily bag limit is 3 Canada geese.

*Missouri:* The season for Canada geese may extend for 79 days and may be split into 3 segments provided that at least 1 segment of at least 9 days occurs prior to October 16. The daily bag limit is 3 Canada geese through October 15 and 2 Canada geese thereafter.

*Ohio:*

(a) *Lake Erie Zone*—The season may extend for 70 days with no more than one split and must close no later than December 28, 2008. The daily bag limit is 2 Canada geese.

(b) *North Zone*—The season may extend for 70 days with no more than one split and must close no later than January 11, 2009. The daily bag limit is 2 Canada geese.

(c) *South Zone*—The season may extend for 70 days with no more than one split and must close no later than January 25, 2009. The daily bag limit is 2 Canada geese.

*Tennessee:*

(a) *Northwest Zone*—The season for Canada geese may not exceed 72 days, and may extend to February 15. The daily bag limit is 2 Canada geese.

(b) *Southwest Zone*—The season for Canada geese may extend for 72 days. The daily bag limit is 2 Canada geese.

(c) *Kentucky/Barkley Lakes Zone*—The season for Canada geese may extend for 72 days. The daily bag limit is 2 Canada geese.

(d) *Remainder of the State*—The season for Canada geese may extend for 72 days. The daily bag limit is 2 Canada geese.

*Wisconsin:*

(a) *Horicon Zone*—The framework opening date for all geese is September 16. The season may not exceed 92 days. All Canada geese harvested must be tagged. The season limit will be 6 Canada geese per permittee.

(b) *Collins Zone*—The framework opening date for all geese is September 16. The season may not exceed 70 days. All Canada geese harvested must be tagged. The season limit will be 6 Canada geese per permittee.

(c) *Exterior Zone*—The framework opening date for all geese is September 16. The season may not exceed 85 days. The daily bag limit is 2 Canada geese.

*Additional Limits:* In addition to the harvest limits stated for the respective zones above, an additional 4,500 Canada geese may be taken in the Horicon Zone under special agricultural permits.

**Central Flyway**

*Ducks, Mergansers, and Coots*

*Outside Dates:* Between the Saturday nearest September 24 (September 27) and the last Sunday in January (January 25).

*Hunting Seasons:*

(1) *High Plains Mallard Management Unit (roughly defined as that portion of the Central Flyway which lies west of the 100th meridian*): 97 days. The last 23 days may start no earlier than the Saturday nearest December 10 (December 13).

(2) *Remainder of the Central Flyway:* 74 days.

*Bag Limits:*

(1) *Colorado, Montana, Nebraska, New Mexico, and Oklahoma:* The daily bag limit is 6 ducks, with species and sex restrictions as follows: 5 mallards (no more than 2 of which may be females), 2 redheads, 2 scaup, 2 wood ducks, 1 pintail, 1 mottled duck, and 1 canvasback. For pintails and canvasbacks, the season length would be 39 days, which may be split according to applicable zones/split duck hunting configurations approved for each State. A single canvasback and pintail may also be included in the 6-bird daily bag limit for designated youth-hunt days.

(2) *Kansas, North Dakota, South Dakota, Texas, and Wyoming:* The daily bag limit is 5 ducks, with species and sex restrictions as follows: 2 scaup, 2 redheads, and 2 wood ducks, and only 1 duck from the following group—hen mallard, mottled duck, pintail, canvasback.

*Merganser Limits:* The daily bag limit is 5 mergansers, only 2 of which may be hooded mergansers. In States that include mergansers in the duck daily bag limit, the daily limit may be the same as the duck bag limit, only two of which may be hooded mergansers.

*Coot Limits:* The daily bag limit is 15 coots.

*Zoning and Split Seasons:* Kansas (Low Plains portion), Montana, Nebraska (Low Plains portion), New Mexico, Oklahoma (Low Plains portion), South Dakota (Low Plains portion), Texas (Low Plains portion), and Wyoming may select hunting seasons by zones.

In Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming, the regular season may be split into two segments.

In Colorado, the season may be split into three segments.

**Geese**

*Split Seasons:* Seasons for geese may be split into three segments. Three-way split seasons for Canada geese require Central Flyway Council and U.S. Fish and Wildlife Service approval, and a 3-year evaluation by each participating State.

*Outside Dates:* For dark geese, seasons may be selected between the outside dates of the Saturday nearest September 24 (September 27) and the Sunday nearest February 15 (February 15). For light geese, outside dates for seasons may be selected between the Saturday nearest September 24 (September 27) and March 10. In the Rainwater Basin Light Goose Area (East and West) of Nebraska, temporal and spatial restrictions that are consistent with the late-winter snow goose hunting strategy cooperatively developed by the Central Flyway Council and the Service are required.

*Season Lengths and Limits:*

*Light Geese:* States may select a light goose season not to exceed 107 days. The daily bag limit for light geese is 20 with no possession limit.

*Dark Geese:* In Kansas, Nebraska, North Dakota, Oklahoma, South Dakota, and the Eastern Goose Zone of Texas,

States may select a season for Canada geese (or any other dark goose species except white-fronted geese) not to exceed 107 days with a daily bag limit of 3. Additionally, in the Eastern Goose Zone of Texas, an alternative season of 107 days with a daily bag limit of 1 Canada goose may be selected. For white-fronted geese, these States may select either a season of 72 days with a bag limit of 2 or an 86-day season with a bag limit of 1.

In Montana, New Mexico and Wyoming, States may select seasons not to exceed 107 days. The daily bag limit for dark geese is 5 in the aggregate.

In Colorado, the season may not exceed 107 days. The daily bag limit is 4 dark geese in the aggregate.

In the Western Goose Zone of Texas, the season may not exceed 95 days. The daily bag limit for Canada geese (or any other dark goose species except white-fronted geese) is 4. The daily bag limit for white-fronted geese is 1.

**Pacific Flyway**

*Ducks, Mergansers, Coots, Common Moorhens, and Purple Gallinules*

Hunting Seasons and Duck Limits: Concurrent 107 days. The daily bag limit is 7 ducks and mergansers, including no more than 2 female mallards, 1 pintail, 2 scaup, and 2 redheads. For scaup, the season length would be 86 days, which may be split according to applicable zones/split duck hunting configurations approved for each State. The season on canvasbacks is closed. A daily bag limit of 2 scaup may also be included in the 7-bird daily bag limit for designated youth-hunt days.

The season on coots and common moorhens may be between the outside dates for the season on ducks, but not to exceed 107 days.

*Coot, Common Moorhen, and Purple Gallinule Limits:* The daily bag and possession limits of coots, common moorhens, and purple gallinules are 25, singly or in the aggregate.

*Outside Dates:* Between the Saturday nearest September 24 (September 27) and the last Sunday in January (January 25).

*Zoning and Split Seasons:* Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and Wyoming may select hunting seasons by zones. Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and Wyoming may split their seasons into two segments.

Colorado, Montana, and New Mexico may split their seasons into three segments.

*Colorado River Zone, California:* Seasons and limits shall be the same as seasons and limits selected in the adjacent portion of Arizona (South Zone).

**Geese**

*Season Lengths, Outside Dates, and Limits:*

*California, Oregon, and Washington:*

*Dark geese:* Except as subsequently noted, 100-day seasons may be selected, with outside dates between the Saturday nearest October 1 (October 4), and the last Sunday in January (January 25). The basic daily bag limit is 4 dark geese, except the dark goose bag limit does not include brant.

*Light geese:* Except as subsequently noted, 107-day seasons may be selected, with outside dates between the Saturday nearest October 1 (October 4), and March 10. The daily bag limit is 6 light geese.

*Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming:*

*Dark geese:* Except as subsequently noted, 107-day seasons may be selected, with outside dates between the Saturday nearest September 24 (September 27), and the last Sunday in January (January 25). The basic daily bag limit is 4 dark geese.

*Light geese:* Except as subsequently noted, 107-day seasons may be selected, with outside dates between the Saturday nearest September 24 (September 27), and March 10. The basic daily bag limit is 10 light geese.

*Split Seasons:* Unless otherwise specified, seasons for geese may be split into up to 3 segments. Three-way split seasons for Canada geese and white-fronted geese require Pacific Flyway Council and U.S. Fish and Wildlife Service approval and a 3-year evaluation by each participating State.

**Brant Season**

Oregon may select a 16-day season, Washington a 16-day season, and California a 30-day season. Days must be consecutive. Washington and California may select hunting seasons by up to two zones. The daily bag limit is 2 brant and is in addition to dark goose limits. In Oregon and California, the brant season must end no later than December 15.

*Arizona:* The daily bag limit for dark geese is 3.

*California:*

*Northeastern Zone:* The daily bag limit is 6 dark geese and may include no more than 1 cackling Canada goose or 1 Aleutian Canada goose.

*Balance-of-the-State Zone:* Limits may not include more than 6 dark geese per day. In the Sacramento Valley Special Management Area (West), the season on white-fronted geese must begin no earlier than the last Saturday in October and end on or before December 14, and the daily bag limit shall contain no more than 2 white-fronted geese. In the North Coast Special Management Area, 107-day seasons may be selected, with outside dates between the Saturday nearest October 1 (October 4) and March 10. Hunting days that occur after the last Sunday in January shall be concurrent with Oregon's South Coast Zone.

*Colorado:* The daily bag limit for dark geese is 3 geese.

*Nevada:* The daily bag limit for dark geese is 3.

*New Mexico:* The daily bag limit for dark geese is 3.

*Oregon:* Except as subsequently noted, the dark goose daily bag limit is 4, including not more than 1 cackling or Aleutian goose.

*Harney, Lake, and Malheur County Zone:* For Lake County only, the daily dark goose bag limit may not include more than 1 white-fronted goose.

*Klamath County Zone:* A 107-day season may be selected, with outside dates between the Saturday nearest October 1 (October 4), and March 10. A 3-way split season may be selected. The daily goose bag limit is 4 dark geese and 4 white geese except for hunting days that occur after the last Sunday in January when only light geese and white-fronted geese may be taken. The daily bag limit of geese is 4 of which only 3 may be light geese and only 1 may be a white-fronted goose.

*Northwest Special Permit Zone:* Outside dates are between the Saturday nearest October 1 (October 4), and the Sunday closest to March 1 (March 1). The daily bag limit of dark geese is 4 including not more than 2 cackling or Aleutian geese and daily bag limit of light geese is 4. In those designated areas of Tillamook County open to hunting, the daily bag limit of dark geese is 2.

*South Coast Zone:* The daily dark goose bag limit is 4 including cackling and Aleutian geese. In Oregon's South Coast Zone 107-day seasons may be selected, with outside dates between the Saturday nearest October 1 (October 4) and March 10. Hunting days that occur after the last Sunday in January shall be concurrent with California's North Coast Special Management Area. A 3-way split season may be selected.

*Southwest Zone:* The daily dark goose bag limit is 4 including cackling and Aleutian geese.

*Utah:* The daily bag limit for dark geese is 3.

*Washington:* The daily bag limit is 4 geese.

*Area 1:* Outside dates are between the Saturday nearest October 1 (October 4), and the last Sunday in January (January 25).

*Areas 2A and 2B (Southwest Quota Zone):* Except for designated areas, there will be no open season on Canada geese. See section on quota zones. In this area, the daily bag limit may include 2 cackling geese. In Southwest Quota Zone Area 2B (Pacific County), the daily bag limit may include 1 Aleutian goose.

*Areas 4 and 5:* A 107 day season may be selected for dark geese.

*Wyoming:* The daily bag limit for dark geese is 3.

**Quota Zones**

Seasons on geese must end upon attainment of individual quotas of dusky geese allotted to the designated areas of Oregon (165) and Washington (85). The September Canada goose season, the regular goose season, any special late dark goose season, and any extended falconry season, combined, must not exceed 107 days, and the established quota of dusky geese must not be exceeded. Hunting of geese in those designated areas will only be by hunters possessing a State-issued permit authorizing them to do so. In a Service approved investigation, the State must obtain quantitative information on hunter compliance of those regulations aimed at reducing the take of dusky geese. If the monitoring program cannot be conducted, for any reason, the season must immediately close. In the designated areas of the Washington Southwest Quota Zone, a special late goose season may be held between the Saturday following the close of the general goose season and March 10. In the Northwest Special Permit Zone of Oregon, the framework closing date is extended to the Sunday closest to March 1 (March 1). Regular goose seasons may be split into 3 segments within the Oregon and Washington quota zones.

**Swans**

In portions of the Pacific Flyway (Montana, Nevada, and Utah), an open season for taking a limited number of swans may be selected. Permits will be issued by the State and will authorize each permittee to take no more than 1 swan per season with each permit. Nevada may issue up to 2 permits per hunter. Montana and Utah may only issue 1 permit per hunter. Each State's season may open no earlier than the Saturday nearest October 1 (October 4). These seasons are also subject to the following conditions:

*Montana:* No more than 500 permits may be issued. The season must end no later than December 1. The State must implement a harvest-monitoring program to measure the species composition of the swan harvest and should use appropriate measures to maximize hunter compliance in reporting bill measurement and color information.

*Utah:* No more than 2,000 permits may be issued. During the swan season, no more than 10 trumpeter swans may be taken. The season must end no later than the second Sunday in December (December 14) or upon attainment of 10 trumpeter swans in the harvest, whichever occurs earliest. The Utah season remains subject to the terms of the Memorandum of Agreement entered into with the Service in August 2001, regarding harvest monitoring, season closure procedures, and education requirements to minimize the take of trumpeter swans during the swan season.

*Nevada:* No more than 650 permits may be issued. During the swan season, no more than 5 trumpeter swans may be taken. The season must end no later than the Sunday following January 1 (January 4) or upon attainment of 5 trumpeter swans in the harvest, whichever occurs earliest.

In addition, the States of Utah and Nevada must implement a harvest-monitoring program to measure the species composition of the swan harvest. The harvest-monitoring program must require that all harvested swans or their species-determinant parts be examined by either State or Federal biologists for the purpose of species classification. The States should use appropriate measures to maximize hunter compliance in providing bagged swans for examination. Further, the States of Montana, Nevada, and Utah must achieve at least an 80-percent compliance rate, or subsequent permits will be reduced by 10 percent. All three States must provide to the Service by June 30, 2009, a report detailing harvest, hunter participation, reporting compliance, and monitoring of swan populations in the designated hunt areas.

**Tundra Swans**

In portions of the Atlantic Flyway (North Carolina and Virginia) and the Central Flyway (North Dakota, South Dakota [east of the Missouri River], and that portion of Montana in the Central Flyway), an open season for taking a limited number of tundra swans may be selected. Permits will be issued by the States that authorize the take of no more than 1 tundra swan per permit. A second permit may be issued to hunters from unused permits remaining after the first drawing. The States must obtain harvest and hunter participation data. These seasons are also subject to the following conditions:

*In the Atlantic Flyway:*

—The season may be 90 days, from October 1 to January 31.

—In North Carolina, no more than 5,000 permits may be issued.

—In Virginia, no more than 600 permits may be issued.

*In the Central Flyway:*

—The season may be 107 days, from the Saturday nearest October 1 (October 4) to January 31.

—In the Central Flyway portion of Montana, no more than 500 permits may be issued.

—In North Dakota, no more than 2,200 permits may be issued.

—In South Dakota, no more than 1,300 permits may be issued.

**Area, Unit, and Zone Descriptions**

*Ducks (Including Mergansers) and Coots*

Atlantic Flyway

**Connecticut**

*North Zone:* That portion of the State north of I–95.

*South Zone:* Remainder of the State.

**Maine**

*North Zone:* That portion north of the line extending east along Maine State Highway 110 from the New Hampshire and Maine State line to the intersection of Maine State Highway 11 in Newfield; then north and east along Route 11 to the intersection of U.S. Route 202 in Auburn; then north and east on Route 202 to the intersection of Interstate Highway 95 in Augusta; then north and east along I–95 to Route 15 in Bangor; then east along Route 15 to Route 9; then east along Route 9 to Stony Brook in Baileyville; then east along Stony Brook to the United States border.

*South Zone:* Remainder of the State.

**Massachusetts**

*Western Zone:* That portion of the State west of a line extending south from the Vermont State line on I–91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut State line.

*Central Zone:* That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire State line on I–95 to U.S. 1, south on U.S. 1 to I–93, south on I–93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I–195, west to the Rhode Island State line; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the

Taunton River upstream to the Center St.-Elm St. bridge shall be in the Coastal Zone.

*Coastal Zone:* That portion of Massachusetts east and south of the Central Zone.

**New Hampshire**

*Coastal Zone:* That portion of the State east of a line extending west from the Maine State line in Rollinsford on NH 4 to the city of Dover, south to NH 108, south along NH 108 through Madbury, Durham, and Newmarket to NH 85 in Newfields, south to NH 101 in Exeter, east to NH 51 (Exeter-Hampton Expressway), east to I–95 (New Hampshire Turnpike) in Hampton, and south along I–95 to the Massachusetts State line.

*Inland Zone:* That portion of the State north and west of the above boundary and along the Massachusetts State line crossing the Connecticut River to Interstate 91 and northward in Vermont to Route 2, east to 102, northward to the Canadian border.

**New Jersey**

*Coastal Zone:* That portion of the State seaward of a line beginning at the New York State line in Raritan Bay and extending west along the New York State line to NJ 440 at Perth Amboy; west on NJ 440 to the Garden State Parkway; south on the Garden State Parkway to the shoreline at Cape May and continuing to the Delaware State line in Delaware Bay.

*North Zone:* That portion of the State west of the Coastal Zone and north of a line extending west from the Garden State Parkway on NJ 70 to the New Jersey Turnpike, north on the turnpike to U.S. 206, north on U.S. 206 to U.S. 1 at Trenton, west on U.S. 1 to the Pennsylvania State line in the Delaware River.

*South Zone:* That portion of the State not within the North Zone or the Coastal Zone.

**New York**

*Lake Champlain Zone:* The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont State line.

*Long Island Zone:* That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

*Western Zone:* That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania State line.

*Northeastern Zone:* That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81 to NY 31, east along NY 31 to NY 13, north along NY 13 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont State line, exclusive of the Lake Champlain Zone.

*Southeastern Zone:* The remaining portion of New York.

**Pennsylvania**

*Lake Erie Zone:* The Lake Erie waters of Pennsylvania and a shoreline margin along Lake Erie from New York on the east to Ohio on the west extending 150 yards inland, but including all of Presque Isle Peninsula.

*Northwest Zone:* The area bounded on the north by the Lake Erie Zone and including all of Erie and Crawford Counties and those portions of Mercer and Venango Counties north of I–80.

*North Zone:* That portion of the State east of the Northwest Zone and north of a line extending east on I–80 to U.S. 220, Route 220 to I–180, I–180 to I–80, and I–80 to the Delaware River.

*South Zone:* The remaining portion of Pennsylvania.

**Vermont**

*Lake Champlain Zone:* The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York State line along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to the Canadian border.

*Interior Zone:* That portion of Vermont west of the Lake Champlain Zone and eastward of a line extending from the Massachusetts State line at Interstate 91; north along Interstate 91 to U.S. 2; east along U.S. 2 to VT 102; north along VT 102 to VT 253; north along VT 253 to the Canadian border.

*Connecticut River Zone:* The remaining portion of Vermont east of the Interior Zone.

**West Virginia**

*Zone 1:* That portion outside the boundaries in Zone 2.

*Zone 2 (Allegheny Mountain Upland):* That area bounded by a line extending south along U.S. 220 through Keyser to U.S. 50; U.S. 50 to WV 93; WV 93 south to WV 42; WV 42 south to Petersburg; WV 28 south to Minnehaha Springs; WV 39 west to U.S. 219; U.S. 219 south to I–64; I–64 west to U.S. 60; U.S. 60 west to U.S. 19; U.S. 19 north to I–79, I–79 north to I–68; I–68 east to the Maryland State line; and along the State line to the point of beginning.

**Mississippi Flyway**

*Alabama*

*South Zone:* Mobile and Baldwin Counties.

*North Zone:* The remainder of Alabama.

*Illinois*

*North Zone:* That portion of the State north of a line extending west from the Indiana border along Peotone-Beecher Road to Illinois Route 50, south along Illinois Route 50 to Wilmington-Peotone Road, west along Wilmington-Peotone Road to Illinois Route 53, north along Illinois Route 53 to New River Road, northwest along New River Road to Interstate Highway 55, south along I–55 to Pine Bluff-Lorenzo Road, west along Pine Bluff-Lorenzo Road to Illinois Route 47, north along Illinois Route 47 to I–80, west along I–80 to I–39, south along I–39 to Illinois Route 18, west along Illinois Route 18 to Illinois Route 29, south along Illinois Route 29 to Illinois Route 17, west along Illinois Route 17 to the Mississippi River, and due south across the Mississippi River to the Iowa border.

*Central Zone:* That portion of the State south of the North Zone to a line extending west from the Indiana border along Interstate Highway 70 to Illinois Route 4, south along Illinois Route 4 to Illinois Route 161, west along Illinois Route 161 to Illinois Route 158, south and west along Illinois Route 158 to Illinois Route 159, south along Illinois Route 159 to Illinois Route 156, west along Illinois Route 156 to A Road, north and west on A Road to Levee Road, north on Levee Road to the south shore of New Fountain Creek, west along the south shore of New Fountain Creek to the Mississippi River, and due west across the Mississippi River to the Missouri border.

*South Zone:* The remainder of Illinois.

*Indiana*

*North Zone:* That portion of the State north of a line extending east from the Illinois State line along State Road 18 to U.S. Highway 31, north along U.S. 31 to U.S. 24, east along U.S. 24 to Huntington, then southeast along U.S. 224 to the Ohio State line.

*Ohio River Zone:* That portion of the State south of a line extending east from the Illinois State line along Interstate

Highway 64 to New Albany, east along State Road 62 to State Road 56, east along State Road 56 to Vevay, east and north on State 156 along the Ohio River to North Landing, north along State 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio State line.

*South Zone:* That portion of the State between the North and Ohio River Zone boundaries.

*Iowa*

*North Zone:* That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State Highway 37, southeast along State Highway 37 to State Highway 183, northeast along State Highway 183 to State Highway 141, east along State Highway 141 to U.S. Highway 30, then east along U.S. Highway 30 to the Illinois border.

*South Zone:* The remainder of Iowa.

*Kentucky*

*West Zone:* All counties west of and including Butler, Daviess, Ohio, Simpson, and Warren Counties.

*East Zone:* The remainder of Kentucky.

*Louisiana*

*West Zone:* That portion of the State west and south of a line extending south from the Arkansas State line along Louisiana Highway 3 to Bossier City, east along Interstate Highway 20 to Minden, south along Louisiana 7 to Ringgold, east along Louisiana 4 to Jonesboro, south along U.S. Highway 167 to Lafayette, southeast along U.S. 90 to the Mississippi State line.

*East Zone:* The remainder of Louisiana.

*Michigan*

*North Zone:* The Upper Peninsula.

*Middle Zone:* That portion of the Lower Peninsula north of a line beginning at the Wisconsin State line in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, easterly along U.S. 10 BR to U.S. 10, easterly along U.S. 10 to Interstate Highway 75/U.S. Highway 23, northerly along I–75/U.S. 23 to the U.S. 23 exit at Standish, easterly along U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border.

*South Zone:* The remainder of Michigan.

*Minnesota*

*North Duck Zone:* That portion of the State north of a line extending east from the North Dakota State line along State Highway 210 to State Highway 23, east along State Highway 23 to State Highway 39, then east along State Highway 39 to the Wisconsin State line at the Oliver Bridge.

*South Duck Zone:* The remainder of Minnesota.

*Missouri*

*North Zone:* That portion of Missouri north of a line running west from the Illinois State line (Lock and Dam 25) on Lincoln County Highway N to Missouri Highway 79; south on Missouri Highway 79 to Missouri Highway 47; west on Missouri Highway 47 to Interstate 70; west on Interstate 70 to the Kansas State line.

*South Zone:* That portion of Missouri south of a line running west from the Illinois State line on Missouri Highway 34 to Interstate 55; south on Interstate 55 to U.S. Highway 62; west on U.S. Highway 62 to Missouri Highway 53; north on Missouri Highway 53 to Missouri Highway 51; north on Missouri Highway 51 to U.S. Highway 60; west on U.S. Highway 60 to Missouri Highway 21; north on Missouri Highway 21 to Missouri Highway 72; west on Missouri Highway 72 to Missouri Highway 32; west on Missouri Highway 32 to U.S. Highway 65; north on U.S. Highway 65 to U.S. Highway 54; west on U.S. Highway 54 to the Kansas State line.

*Middle Zone:* The remainder of Missouri.

*Ohio*

*North Zone:* That portion of the State north of a line extending east from the Indiana State line along U.S. Highway 33 to State Route 127, south along SR 127 to SR 703, south along SR 703 to SR 219, east along SR 219 to SR 364, north along SR 364 to SR 703, east along SR 703 to SR 66, north along SR 66 to U.S. 33, east along U.S. 33 to SR 385, east along SR 385 to SR 117, south along SR 117 to SR 273, east along SR 273 to SR 31, south along SR 31 to SR 739, east along SR 739 to SR 4, north along SR 4 to SR 95, east along SR 95 to SR 13, southeast along SR 13 to SR 3, northeast along SR 3 to SR 60, north along SR 60 to U.S. 30, east along U.S. 30 to SR 3, south along SR 3 to SR 226, south along SR 226 to SR 514, southwest along SR 514 to SR 754, south along SR 754 to SR 39/60, east along SR 39/60 to SR 241, north along SR 241 to U.S. 30, east along U.S.30 to SR 39, east along SR 39 to the Pennsylvania State line.

*South Zone:* The remainder of Ohio.

*Tennessee*

*Reelfoot Zone:* All or portions of Lake and Obion Counties.

*State Zone:* The remainder of Tennessee.

*Wisconsin*

*North Zone:* That portion of the State north of a line extending east from the Minnesota State line along U.S. Highway 10 to U.S. Highway 41, then north on U.S. Highway 41 to the Michigan State line.

*South Zone:* The remainder of Wisconsin.

**Central Flyway**

*Colorado (Central Flyway Portion)*

*Eastern Plains Zone:* That portion of the State east of Interstate 25, and all of El Paso, Pueblo, Heurfano, and Las Animas Counties.

*Mountain/Foothills Zone:* That portion of the State west of Interstate 25 and east of the Continental Divide, except El Paso, Pueblo, Heurfano, and Las Animas Counties.

*Kansas*

*High Plains Zone:* That portion of the State west of U.S. 283.

*Low Plains Early Zone:* That area of Kansas east of U.S. 283, and generally west of a line beginning at the Junction of the Nebraska border and KS 28; south on KS 28 to U.S. 36; east on U.S. 36 to KS 199; south on KS 199 to Republic Co. Road 563; south on Republic Co. Road 563 to KS 148; east on KS 148 to Republic Co. Road 138; south on Republic Co. Road 138 to Cloud Co. Road 765; south on Cloud Co. Road 765 to KS 9; west on KS 9 to U.S. 24; west on U.S. 24 to U.S. 281; north on U.S. 281 to U.S. 36; west on U.S. 36 to U.S. 183; south on U.S. 183 to U.S. 24; west on U.S. 24 to KS 18; southeast on KS 18 to U.S. 183; south on U.S. 183 to KS 4; east on KS 4 to I–135; south on I–135 to KS 61; southwest on KS 61 to KS 96; northwest on KS 96 to U.S. 56; southwest on U.S. 56 to KS 19; east on KS 19 to U.S. 281; south on U.S. 281 to U.S. 54; west on U.S. 54 to U.S. 183; north on U.S. 183 to U.S. 56; southwest on U.S. 56 to Ford Co. Road 126; south on Ford Co. Road 126 to U.S. 400; northwest on U.S. 400 to U.S. 283.

*Low Plains Late Zone:* The remainder of Kansas.

*Montana (Central Flyway Portion)*

*Zone 1:* The Counties of Blaine, Carbon, Carter, Daniels, Dawson, Fallon, Fergus, Garfield, Golden Valley, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Powder River, Richland, Roosevelt, Sheridan, Stillwater, Sweet Grass, Valley, Wheatland, Wibaux, and Yellowstone.

*Zone 2:* The remainder of Montana.

*Nebraska*

*High Plains Zone:* That portion of Nebraska lying west of a line beginning at the South Dakota-Nebraska border on U.S. 183, south on U.S. 183 to U.S. 20, west on U.S. 20 to NE 7, south on NE 7 to NE 91, southwest on NE 91 to NE 2, southeast on NE 2 to NE 92, west on NE 92 to NE 40, south on NE 40 to NE 47, south on NE 47 to NE 23, east on NE 23 to U.S. 283 and south on U.S. 283 to the Kansas-Nebraska border.

*Low Plains Zone 1:* That portion of Dixon County west of NE 26E Spur and north of NE 12; those portions of Cedar County north of NE 12; those portions of Knox counties north of NE 12 to intersection of Niobrara River; all of Boyd County; Keya Paha County east of U.S. 183. Both banks of the Niobrara River in Keya Paha, Boyd, and Knox counties east of U.S. 183 shall be included in Zone 1.

*Low Plains Zone 2:* Area bounded by designated Federal and State highways and political boundaries beginning at the Kansas-Nebraska border on U.S. 75 to U.S. 136; east to the intersection of U.S. 136 and the Steamboat Trace (Trace); north along the Trace to the intersection with Federal Levee R–562; north along Federal Levee R–562 to the intersection with the Trace; north along the Trace/Burlington Northern Railroad right-of-way to NE 2; west to U.S. 75; north to NE 2; west to NE 43; north to U.S. 34; east to NE 63; north and west to U.S. 77; north to NE 92; west to U.S. 81; south to NE 66; west to NE 14; south to County Road 22 (Hamilton County); west to County Road M, south to County Road 21; west to County Road K; south U.S. 34; west to NE 2; south to U.S. I–80; west to Gunbarrel Road. (Hall/Hamilton county line); south to Giltner Road.; west to U.S. 281; south to U.S. 34; west to NE 10; north to County Road ''R'' (Kearney County) and County Road #742 (Phelps County); west to County Road #438 (Gosper County line); south along County Road #438 (Gosper County line) to County Road #726 (Furnas County line); east to County Road #438 (Harlan County line); south to U.S. 34; south and west to U.S. 136; east to NE 14; south to the Kansas-Nebraska border, west to U.S. 283; north to NE 23; west to NE 47; north to U.S. 30; east to NE 14; north to NE 52; west and north to NE 91 to U.S. 281; south to NE 22; west to NE 11; northwest to NE 91; west to Loup County Line, north to Loup-Brown county line; east along northern boundaries of Loup, Garfield and Wheeler counties; south on the Wheeler-Antelope county line to NE 70; east to NE 14; south to NE 39; southeast to NE 22; east to U.S. 81; southeast to U.S. 30; east to U.S. 75, north to the Washington County line; east to the Iowa-Nebraska border; south along the Iowa-Nebraska border; to the beginning at U.S. 75 and the Kansas-Nebraska border.

*Low Plains Zone 3:* The area east of the High Plains Zone, excluding Low Plains Zone 1, north of Low Plains Zone 2.

*Low Plains Zone 4:* The area east of the High Plains Zone and south of Zone 2.

*New Mexico (Central Flyway Portion)*

*North Zone:* That portion of the State north of I–40 and U.S. 54.

*South Zone:* The remainder of New Mexico.

*North Dakota*

*High Plains Unit:* That portion of the State south and west of a line from the South Dakota State line along U.S. 83 and I–94 to ND 41, north to U.S. 2, west to the Williams/Divide County line, then north along the County line to the Canadian border.

*Low Plains Unit:* The remainder of North Dakota.

*Oklahoma*

*High Plains Zone:* The Counties of Beaver, Cimarron, and Texas.

*Low Plains Zone 1:* That portion of the State east of the High Plains Zone and north of a line extending east from the Texas State line along OK 33 to OK 47, east along OK 47 to U.S. 183, south along U.S. 183 to I–40, east along I–40 to U.S. 177, north along U.S. 177 to OK 33, east along OK 33 to OK 18, north along OK 18 to OK 51, west along OK 51 to I–35, north along I–35 to U.S. 412, west along U.S. 412 to OK 132, then north along OK 132 to the Kansas State line.

*Low Plains Zone 2:* The remainder of Oklahoma.

*South Dakota*

*High Plains Zone:* That portion of the State west of a line beginning at the North Dakota State line and extending south along U.S. 83 to U.S.14, east on U.S.14 to Blunt, south on the Blunt-Canning road to SD 34, east and south on SD 34 to SD 50 at Lee's Corner, south on SD 50 to I–90, east on I–90 to SD 50, south on SD 50 to SD 44, west on SD 44 across the Platte-Winner bridge to SD 47, south on SD 47 to U.S.18, east on U.S. 18 to SD 47, south on SD 47 to the Nebraska State line.

*North Zone:* That portion of northeastern South Dakota east of the High Plains Unit and north of a line extending east along U.S. 212 to the Minnesota State line.

*South Zone:* That portion of Gregory County east of SD 47 and south of SD 44; Charles Mix County south of SD 44 to the Douglas County line; south on SD 50 to Geddes; east on the Geddes Highway to U.S. 281; south on U.S. 281 and U.S. 18 to SD 50; south and east on SD 50 to the Bon Homme County line; the Counties of Bon Homme, Yankton, and Clay south of SD 50; and Union County south and west of SD 50 and I–29.

*Middle Zone:* The remainder of South Dakota.

*Texas*

*High Plains Zone:* That portion of the State west of a line extending south from the Oklahoma State line along U.S. 183 to Vernon, south along U.S. 283 to Albany, south along TX 6 to TX 351 to Abilene, south along U.S. 277 to Del Rio, then south along the Del Rio International Toll Bridge access road to the Mexico border.

*Low Plains North Zone:* That portion of northeastern Texas east of the High Plains Zone and north of a line beginning at the International Toll Bridge south of Del Rio, then extending east on U.S. 90 to San Antonio, then continuing east on I–10 to the Louisiana State line at Orange, Texas.

*Low Plains South Zone:* The remainder of Texas.

*Wyoming (Central Flyway portion)*

*Zone 1:* The Counties of Converse, Goshen, Hot Springs, Natrona, Platte, and Washakie; and the portion of Park County east of the Shoshone National Forest boundary and south of a line beginning where the Shoshone National Forest boundary meets Park County Road 8VC, east along Park County Road 8VC to Park County Road 1AB, continuing east along Park County Road 1AB to Wyoming Highway 120, north along WY Highway 120 to WY Highway 294, south along WY Highway 294 to Lane 9, east along Lane 9 to Powel and WY Highway 14A, and finally east along WY Highway 14A to the Park County and Big Horn County line.

*Zone 2:* The remainder of Wyoming.

**Pacific Flyway**

*Arizona*

*Game Management Units (GMU) as follows:*

*South Zone:* Those portions of GMUs 6 and 8 in Yavapai County, and GMUs 10 and 12B–45.

*North Zone:* GMUs 1–5, those portions of GMUs 6 and 8 within Coconino County, and GMUs 7, 9, 12A.

*California*

*Northeastern Zone:* In that portion of California lying east and north of a line beginning at the intersection of Interstate 5 with the California-Oregon line; south along Interstate 5 to its junction with Walters Lane south of the town or Yreka; west along Walters Lane to its junction with Easy Street; south along Easy Street to the junction with Old Highway 99: south along Old Highway 99 to the point of intersection with Interstate 5 north of the town of Weed; south along Interstate 5 to its junction with Highway 89; east and south along Highway 89 to Main Street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California-Nevada State line; north along the California-Nevada State line to the junction of the California-Nevada-Oregon State lines; west along the California-Oregon State line to the point of origin.

*Colorado River Zone:* Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada State line south along U.S. 95 to Vidal Junction; south on a road known as ''Aqueduct Road'' in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the ''Desert Center to Rice Road'' to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east seven miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

*Southern Zone:* That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada State line.

*Southern San Joaquin Valley Temporary Zone:* All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

*Balance-of-the-State Zone:* The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

*Idaho*

*Zone 1:* Includes all lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County east of ID 37 and ID 39.

*Zone 2:* Includes the following Counties or portions of Counties: Adams; Bear Lake; Benewah; Bingham within the Blackfoot Reservoir drainage; Blaine; Bonner; Bonneville; Boundary; Butte; Camas; Caribou except the Fort Hall Indian Reservation; Cassia within the Minidoka National Wildlife Refuge; Clark; Clearwater; Custer; Elmore within the Camas Creek drainage; Franklin; Fremont; Idaho; Jefferson; Kootenai; Latah; Lemhi; Lewis; Madison; Nez Perce; Oneida; Power within the Minidoka National Wildlife Refuge; Shoshone; Teton; and Valley Counties.

*Zone 3:* Includes the following Counties or portions of Counties: Ada; Boise; Canyon; Cassia except within the Minidoka National Wildlife Refuge; Elmore except the Camas Creek drainage; Gem; Gooding; Jerome; Lincoln; Minidoka; Owyhee; Payette; Power west of ID 37 and ID 39 except that portion within the Minidoka National Wildlife Refuge; Twin Falls; and Washington Counties.

*Nevada*

*Lincoln and Clark County Zone:* All of Clark and Lincoln Counties.

*Remainder-of-the-State Zone:* The remainder of Nevada.

*Oregon*

*Zone 1:* Clatsop, Tillamook, Lincoln, Lane, Douglas, Coos, Curry, Josephine, Jackson, Linn, Benton, Polk, Marion, Yamhill, Washington, Columbia, Multnomah, Clackamas, Hood River, Wasco, Sherman, Gilliam, Morrow and Umatilla Counties.

*Columbia Basin Mallard Management Unit:* Gilliam, Morrow, and Umatilla Counties.

*Zone 2:* The remainder of the State.

*Utah*

*Zone 1:* All of Box Elder, Cache, Daggett, Davis, Duchesne, Morgan, Rich, Salt Lake, Summit, Unitah, Utah, Wasatch, and Weber Counties, and that part of Toole County north of I–80.

*Zone 2:* The remainder of Utah.

*Washington*

*East Zone:* All areas east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

*Columbia Basin Mallard Management Unit:* Same as East Zone.

*West Zone:* All areas to the west of the East Zone.

*Wyoming*

*Snake River Zone:* Beginning at the south boundary of Yellowstone National Park and the Continental Divide; south along the Continental Divide to Union Pass and the Union Pass Road (U.S.F.S. Road 600); west and south along the Union Pass Road to U.S.F.S. Road 605; south along U.S.F.S. Road 605 to the Bridger-Teton National Forest boundary; along the national forest boundary to the Idaho State line; north along the Idaho State line to the south boundary of Yellowstone National Park; east along the Yellowstone National Park boundary to the Continental Divide.

*Balance of Flyway Zone:* Balance of the Pacific Flyway in Wyoming outside the Snake River Zone.

**Geese**

*Atlantic Flyway*

Connecticut

*AP Unit:* Litchfield County and the portion of Hartford County west of a line beginning at the Massachusetts border in Suffield and extending south along Route 159 to its intersection with Route 91 in Hartford, and then extending south along Route 91 to its intersection with the Hartford/Middlesex County line.

*AFRP Unit:* Starting at the intersection of I–95 and the Quinnipiac River, north on the Quinnipiac River to its intersection with I–91, north on I–91 to I–691, west on I–691 to the Hartford County line, and encompassing the rest

of New Haven County and Fairfield County in its entirety.

*NAP H-Unit:* All of the rest of the State not included in the AP or AFRP descriptions above.

*South Zone:* Same as for ducks.

*North Zone:* Same as for ducks.

Maryland

*Resident Population (RP) Zone:* Garrett, Allegany, Washington, Frederick, and Montgomery Counties; that portion of Prince George's County west of Route 3 and Route 301; that portion of Charles County west of Route 301 to the Virginia State line; and that portion of Carroll County west of Route 31 to the intersection of Route 97, and west of Route 97 to the Pennsylvania line.

*AP Zone:* Remainder of the State.

Massachusetts

*NAP Zone:* Central and Coastal Zones (see duck zones).

*AP Zone:* The Western Zone (see duck zones).

*Special Late Season Area:* The Central Zone and that portion of the Coastal Zone (see duck zones) that lies north of the Cape Cod Canal, north to the New Hampshire line.

New Hampshire

Same zones as for ducks.

New Jersey

*North:* That portion of the State within a continuous line that runs east along the New York State boundary line to the Hudson River; then south along the New York State boundary to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with Route 287; then west along Route 287 to its intersection with Route 206 in Bedminster (Exit 18); then north along Route 206 to its intersection with Route 94: then west along Route 94 to the tollbridge in Columbia; then north along the Pennsylvania State boundary in the Delaware River to the beginning point.

*South:* That portion of the State within a continuous line that runs west from the Atlantic Ocean at Ship Bottom along Route 72 to Route 70; then west along Route 70 to Route 206; then south along Route 206 to Route 536; then west along Route 536 to Route 322; then west along Route 322 to Route 55; then south along Route 55 to Route 553 (Buck Road); then south along Route 553 to Route 40; then east along Route 40 to route 55; then south along Route 55 to Route 552 (Sherman Avenue); then west along Route 552 to Carmel Road; then south along Carmel Road to Route 49; then east along Route 49 to Route 555; then south along Route 555 to Route 553; then east along Route 553 to Route 649; then north along Route 649 to Route 670; then east along Route 670 to Route 47; then north along Route 47 to Route 548; then east along Route 548 to Route 49; then east along Route 49 to Route 50; then south along Route 50 to Route 9; then south along Route 9 to Route 625 (Sea Isle City Boulevard); then east along Route 625 to the Atlantic Ocean; then north to the beginning point.

New York

*Lake Champlain Goose Area:* That area of New York State lying east and north of a continuous line extending along Route 11 from the New York-Canada International boundary south to Route 9B, south along Route 9B to Route 9, south along Route 9 to Route 22 south of Keeseville, south along Route 22 to the west shore of South Bay along and around the shoreline of South Bay to Route 22 on the east shore of South Bay, southeast along Route 22 to Route 4, northeast along Route 4 to the New York-Vermont boundary.

*Northeast Goose Area:* The same as the Northeastern Waterfowl Hunting Zone, which is that area of New York State lying north of a continuous line extending from Lake Ontario east along the north shore of the Salmon River to Interstate 81, south along Interstate Route 81 to Route 31, east along Route 31 to Route 13, north along Route 13 to Route 49, east along Route 49 to Route 365, east along Route 365 to Route 28, east along Route 28 to Route 29, east along Route 29 to Interstate Route 87, north along Interstate Route 87 to Route 9 (at Exit 20), north along Route 9 to Route 149, east along Route 149 to Route 4, north along Route 4 to the New York-Vermont boundary, exclusive of the Lake Champlain Zone.

*East Central Goose Area:* That area of New York State lying inside of a continuous line extending from Interstate Route 81 in Cicero, east along Route 31 to Route 13, north along Route 13 to Route 49, east along Route 49 to Route 365, east along Route 365 to Route 28, east along Route 28 to Route 29, east along Route 29 to Route 147 at Kimball Corners, south along Route 147 to Schenectady County Route 40 (West Glenville Road), west along Route 40 to Touareuna Road, south along Touareuna Road to Schenectady County Route 59, south along Route 59 to State Route 5, east along Route 5 to the Lock 9 bridge, southwest along the Lock 9 bridge to Route 5S, southeast along Route 5S to Schenectady County Route 58, southwest along Route 58 to the NYS Thruway, south along the Thruway to Route 7, southwest along Route 7 to Schenectady County Route 103, south along Route 103 to Route 406, east along Route 406 to Schenectady County Route 99 (Windy Hill Road), south along Route 99 to Dunnsville Road, south along Dunnsville Road to Route 397, southwest along Route 397 to Route 146 at Altamont, west along Route 146 to Albany County Route 252, northwest along Route 252 to Schenectady County Route 131, north along Route 131 to Route 7, west along Route 7 to Route 10 at Richmondville, south on Route 10 to Route 23 at Stamford, west along Route 23 to the south bank of the Susquehanna River, southwest along the south bank of the Susquehanna River to Interstate Route 88 near Harpursville, west along Route 88 to Route 79, northwest along Route 79 to Route 26 in Whitney Point, southwest along Route 26 to Interstate Route 81, north along Route 81 to the point of beginning.

*West Central Goose Area:* That area of New York State lying within a continuous line beginning at the point where the northerly extension of Route 269 (County Line Road on the Niagara-Orleans County boundary) meets the International boundary with Canada, south to the shore of Lake Ontario at the eastern boundary of Golden Hill State Park, south along the extension of Route 269 and Route 269 to Route 104 at Jeddo, west along Route 104 to Niagara County Route 271, south along Route 271 to Route 31E at Middleport, south along Route 31E to Route 31, west along Route 31 to Griswold Street, south along Griswold Street to Ditch Road, south along Ditch Road to Foot Road, south along Foot Road to the north bank of Tonawanda Creek, west along the north bank of Tonawanda Creek to Route 93, south along Route 93 to Route 5, east along Route 5 to Crittenden-Murrays Corners Road, south on Crittenden-Murrays Corners Road to the NYS Thruway, east along the Thruway 90 to Route 98 (at Thruway Exit 48) in Batavia, south along Route 98 to Route 20, east along Route 20 to Route 19 in Pavilion Center, south along Route 19 to Route 63, southeast along Route 63 to Route 246, south along Route 246 to Route 39 in Perry, northeast along Route 39 to Route 20A, northeast along Route 20A to Route 20, east along Route 20 to Route 364 (near Canandaigua), south and east along Route 364 to Yates County Route 18 (Italy Valley Road), southwest along Route 18 to Yates County Route 34, east along Route 34 to Yates County Route 32, south along Route 32 to Steuben County Route 122, south along Route 122 to Route 53, south along Route 53 to Steuben County

Route 74, east along Route 74 to Route 54A (near Pulteney), south along Route 54A to Steuben County Route 87, east along Route 87 to Steuben County Route 96, east along Route 96 to Steuben County Route 114, east along Route 114 to Schuyler County Route 23, east and southeast along Route 23 to Schuyler County Route 28, southeast along Route 28 to Route 409 at Watkins Glen, south along Route 409 to Route 14, south along Route 14 to Route 224 at Montour Falls, east along Route 224 to Route 228 in Odessa, north along Route 228 to Route 79 in Mecklenburg, east along Route 79 to Route 366 in Ithaca, northeast along Route 366 to Route 13, northeast along Route 13 to Interstate Route 81 in Cortland, north along Route 81 to the north shore of the Salmon River to shore of Lake Ontario, extending generally northwest in a straight line to the nearest point of the International boundary with Canada, south and west along the International boundary to the point of beginning.

*Hudson Valley Goose Area:* That area of New York State lying within a continuous line extending from Route 4 at the New York-Vermont boundary, west and south along Route 4 to Route 149 at Fort Ann, west on Route 149 to Route 9, south along Route 9 to Interstate Route 87 (at Exit 20 in Glens Falls), south along Route 87 to Route 29, west along Route 29 to Route 147 at Kimball Corners, south along Route 147 to Schenectady County Route 40 (West Glenville Road), west along Route 40 to Touareuna Road, south along Touareuna Road to Schenectady County Route 59, south along Route 59 to State Route 5, east along Route 5 to the Lock 9 bridge, southwest along the Lock 9 bridge to Route 5S, southeast along Route 5S to Schenectady County Route 58, southwest along Route 58 to the NYS Thruway, south along the Thruway to Route 7, southwest along Route 7 to Schenectady County Route 103, south along Route 103 to Route 406, east along Route 406 to Schenectady County Route 99 (Windy Hill Road), south along Route 99 to Dunnsville Road, south along Dunnsville Road to Route 397, southwest along Route 397 to Route 146 at Altamont, southeast along Route 146 to Main Street in Altamont, west along Main Street to Route 156, southeast along Route 156 to Albany County Route 307, southeast along Route 307 to Route 85A, southwest along Route 85A to Route 85, south along Route 85 to Route 443, southeast along Route 443 to Albany County Route 301 at Clarksville, southeast along Route 301 to Route 32, south along Route 32 to Route 23 at Cairo, west along Route 23 to Joseph Chadderdon Road, southeast along Joseph Chadderdon Road to Hearts Content Road (Greene County Route 31), southeast along Route 31 to Route 32, south along Route 32 to Greene County Route 23A, east along Route 23A to Interstate Route 87 (the NYS Thruway), south along Route 87 to Route 28 (Exit 19) near Kingston, northwest on Route 28 to Route 209, southwest on Route 209 to the New York-Pennsylvania boundary, southeast along the New York-Pennsylvania boundary to the New York-New Jersey boundary, southeast along the New York-New Jersey boundary to Route 210 near Greenwood Lake, northeast along Route 210 to Orange County Route 5, northeast along Orange County Route 5 to Route 105 in the Village of Monroe, east and north along Route 105 to Route 32, northeast along Route 32 to Orange County Route 107 (Quaker Avenue), east along Route 107 to Route 9W, north along Route 9W to the south bank of Moodna Creek, southeast along the south bank of Moodna Creek to the New Windsor-Cornwall town boundary, northeast along the New Windsor-Cornwall town boundary to the Orange-Dutchess County boundary (middle of the Hudson River), north along the county boundary to Interstate Route 84, east along Route 84 to the Dutchess-Putnam County boundary, east along the county boundary to the New York-Connecticut boundary, north along the New York-Connecticut boundary to the New York-Massachusetts boundary, north along the New York-Massachusetts boundary to the New York-Vermont boundary, north to the point of beginning.

*Eastern Long Island Goose Area (NAP High Harvest Area):* That area of Suffolk County lying east of a continuous line extending due south from the New York-Connecticut boundary to the northernmost end of Roanoke Avenue in the Town of Riverhead; then south on Roanoke Avenue (which becomes County Route 73) to State Route 25; then west on Route 25 to Peconic Avenue; then south on Peconic Avenue to County Route (CR) 104 (Riverleigh Avenue); then south on CR 104 to CR 31 (Old Riverhead Road); then south on CR 31 to Oak Street; then south on Oak Street to Potunk Lane; then west on Stevens Lane; then south on Jessup Avenue (in Westhampton Beach) to Dune Road (CR 89); then due south to international waters.

*Western Long Island Goose Area (RP Area):* That area of Westchester County and its tidal waters southeast of Interstate Route 95 and that area of Nassau and Suffolk Counties lying west of a continuous line extending due south from the New York-Connecticut boundary to the northernmost end of the Sunken Meadow State Parkway; then south on the Sunken Meadow Parkway to the Sagtikos State Parkway; then south on the Sagtikos Parkway to the Robert Moses State Parkway; then south on the Robert Moses Parkway to its southernmost end; then due south to international waters.

*Central Long Island Goose Area (NAP Low Harvest Area):* That area of Suffolk County lying between the Western and Eastern Long Island Goose Areas, as defined above.

*South Goose Area:* The remainder of New York State, excluding New York City.

*Special Late Canada Goose Area:* That area of the Central Long Island Goose Area lying north of State Route 25A and west of a continuous line extending northward from State Route 25A along Randall Road (near Shoreham) to North Country Road, then east to Sound Road and then north to Long Island Sound and then due north to the New York-Connecticut boundary.

North Carolina

*SJBP Hunt Zone:* Includes the following counties or portions of counties: Anson, Cabarrus, Chatham, Davidson, Durham, Halifax (that portion east of NC 903), Montgomery (that portion west of NC 109), Northampton, Richmond (that portion south of NC 73 and west of U.S. 220 and north of U.S. 74), Rowan, Stanly, Union, and Wake.

*RP Hunt Zone:* Includes the following counties or portions of counties: Alamance, Alleghany, Alexander, Ashe, Avery, Beaufort, Bertie (that portion south and west of a line formed by NC 45 at the Washington Co. line to U.S. 17 in Midway, U.S. 17 in Midway to U.S. 13 in Windsor, U.S. 13 in Windsor to the Hertford Co. line), Bladen, Brunswick, Buncombe, Burke, Caldwell, Carteret, Caswell, Catawba, Cherokee, Clay, Cleveland, Columbus, Craven, Cumberland, Davie, Duplin, Edgecombe, Forsyth, Franklin, Gaston, Gates, Graham, Granville, Greene, Guilford, Halifax (that portion west of NC 903), Harnett, Haywood, Henderson, Hertford, Hoke, Iredell, Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, McDowell, Macon, Madison, Martin, Mecklenburg, Mitchell, Montgomery (that portion that is east of NC 109), Moore, Nash, New Hanover, Onslow, Orange, Pamlico, Pender, Person, Pitt, Polk, Randolph, Richmond (all of the county with exception of that portion that is south of NC 73 and west of U.S. 220 and north of U.S. 74), Robeson, Rockingham, Rutherford, Sampson, Scotland, Stokes, Surry, Swain, Transylvania, Vance, Warren, Watauga, Wayne, Wilkes,

Wilson, Yadkin, and Yancey. Northeast Hunt Unit: Includes the following counties or portions of counties: Bertie (that portion north and east of a line formed by NC 45 at the Washington County line to U.S. 17 in Midway, U.S. 17 in Midway to U.S. 13 in Windsor, U.S. 13 in Windsor to the Hertford Co. line), Camden, Chowan, Currituck, Dare, Hyde, Pasquotank, Perquimans, Tyrrell, and Washington.

Pennsylvania

*Resident Canada Goose Zone:* All of Pennsylvania except for SJBP Zone and the area east of route SR 97 from the Maryland State Line to the intersection of SR 194, east of SR 194 to intersection of U.S. Route 30, south of U.S. Route 30 to SR 441, east of SR 441 to SR 743, east of SR 743 to intersection of I–81, east of I–81 to intersection of I–80, and south of I–80 to the New Jersey State line.

*SJBP Zone:* The area north of I–80 and west of I–79 including in the city of Erie west of Bay Front Parkway to and including the Lake Erie Duck zone (Lake Erie, Presque Isle, and the area within 150 yards of the Lake Erie Shoreline).

*AP Zone:* The area east of route SR 97 from Maryland State Line to the intersection of SR 194, east of SR 194 to intersection of U.S. Route 30, south of U.S. Route 30 to SR 441, east of SR 441 to SR 743, east of SR 743 to intersection of I–81, east of I–81 to intersection of I–80, south of I–80 to New Jersey State line.

Rhode Island

*Special Area for Canada Geese:* Kent and Providence Counties and portions of the towns of Exeter and North Kingston within Washington County (see State regulations for detailed descriptions).

South Carolina

*Canada Goose Area:* Statewide except for Clarendon County, that portion of Orangeburg County north of SC Highway 6, and that portion of Berkeley County north of SC Highway 45 from the Orangeburg County line to the junction of SC Highway 45 and State Road S–8–31 and that portion west of the Santee Dam.

Vermont

Same zones as for ducks.

Virginia

*AP Zone:* The area east and south of the following line—the Stafford County line from the Potomac River west to Interstate 95 at Fredericksburg, then south along Interstate 95 to Petersburg, then Route 460 (SE) to City of Suffolk, then south along Route 32 to the North Carolina line.

*SJBP Zone:* The area to the west of the AP Zone boundary *and* east of the following line: the ''Blue Ridge'' (mountain spine) at the West Virginia-Virginia Border (Loudoun County-Clarke County line) south to Interstate 64 (the Blue Ridge line follows county borders along the western edge of Loudoun-Fauquier-Rappahannock-Madison-Greene-Albemarle and into Nelson Counties), then east along Interstate Rt. 64 to Route 15, then south along Rt. 15 to the North Carolina line.

*RP Zone:* The remainder of the State west of the SJBP Zone.

*Back Bay Area:* The waters of Back Bay and its tributaries and the marshes adjacent thereto, and on the land and marshes between Back Bay and the Atlantic Ocean from Sandbridge to the North Carolina line, and on and along the shore of North Landing River and the marshes adjacent thereto, and on and along the shores of Binson Inlet Lake (formerly known as Lake Tecumseh) and Red Wing Lake and the marshes adjacent thereto.

West Virginia

Same zones as for ducks.

*Mississippi Flyway*

Alabama

*Same zones as for ducks, but in addition:*

*SJBP Zone:* That portion of Morgan County east of U.S. Highway 31, north of State Highway 36, and west of U.S. 231; that portion of Limestone County south of U.S. 72; and that portion of Madison County south of Swancott Road and west of Triana Road.

Arkansas

*Northwest Zone:* Baxter, Benton, Boone, Carroll, Conway, Crawford, Faulkner, Franklin, Johnson, Logan, Madison, Marion, Newton, Perry, Pope, Pulaski, Searcy, Sebastian, Scott, Van Buren, Washington, and Yell Counties.

Illinois

Same zones as for ducks.

Indiana

*Same zones as for ducks but in addition:*

**Special Canada Goose Seasons**

*Indiana Late Canada Goose Season Zone:* That part of the state encompassed by the following counties: Steuben, Lagrange, Elkhart, St. Joseph, La Porte, Starke, Marshall, Kosciusko, Noble, De Kalb, Allen, Whitley, Huntington, Wells, Adams, Boone, Hamilton, Madison, Hendricks, Marion, Hancock, Morgan, Johnson, Shelby, Vermillion, Parke, Vigo, Clay, Sullivan, and Greene.

**Iowa**

*North Zone:* That portion of the State north of U.S. Highway 20.

*South Zone:* The remainder of Iowa.

**Kentucky**

*Western Zone:* That portion of the State west of a line beginning at the Tennessee State line at Fulton and extending north along the Purchase Parkway to Interstate Highway 24, east along I–24 to U.S. Highway 641, north along U.S. 641 to U.S. 60, northeast along U.S. 60 to the Henderson County line, then south, east, and northerly along the Henderson County line to the Indiana State line.

*Ballard Reporting Area:* That area encompassed by a line beginning at the northwest city limits of Wickliffe in Ballard County and extending westward to the middle of the Mississippi River, north along the Mississippi River and along the low-water mark of the Ohio River on the Illinois shore to the Ballard-McCracken County line, south along the county line to Kentucky Highway 358, south along Kentucky 358 to U.S. Highway 60 at LaCenter; then southwest along U.S. 60 to the northeast city limits of Wickliffe.

*Henderson-Union Reporting Area:* Henderson County and that portion of Union County within the Western Zone.

*Pennyroyal/Coalfield Zone:* Butler, Daviess, Ohio, Simpson, and Warren Counties and all counties lying west to the boundary of the Western Goose Zone.

**Michigan**

(a) *North Zone*—Same as North duck zone.

(b) *Middle Zone*—Same as Middle duck zone.

(c) *South Zone*—Same as South duck zone

*Tuscola/Huron Goose Management Unit (GMU):* Those portions of Tuscola and Huron Counties bounded on the south by Michigan Highway 138 and Bay City Road, on the east by Colwood and Bay Port Roads, on the north by Kilmanagh Road and a line extending directly west off the end of Kilmanagh Road into Saginaw Bay to the west boundary, and on the west by the Tuscola-Bay County line and a line extending directly north off the end of the Tuscola-Bay County line into Saginaw Bay to the north boundary.

*Allegan County GMU:* That area encompassed by a line beginning at the junction of 136th Avenue and Interstate Highway 196 in Lake Town Township

and extending easterly along 136th Avenue to Michigan Highway 40, southerly along Michigan 40 through the city of Allegan to 108th Avenue in Trowbridge Township, westerly along 108th Avenue to 46th Street, northerly ( mile along 46th Street to 109th Avenue, westerly along 109th Avenue to I–196 in Casco Township, then northerly along I–196 to the point of beginning.

*Saginaw County GMU:* That portion of Saginaw County bounded by Michigan Highway 46 on the north; Michigan 52 on the west; Michigan 57 on the south; and Michigan 13 on the east.

*Muskegon Wastewater GMU:* That portion of Muskegon County within the boundaries of the Muskegon County wastewater system, east of the Muskegon State Game Area, in sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, and 32, T10N R14W, and sections 1, 2, 10, 11, 12, 13, 14, 24, and 25, T10N R15W, as posted.

*Special Canada Goose Seasons:*

*Southern Michigan Late Season Canada Goose Zone:* Same as the South Duck Zone excluding Tuscola/Huron Goose Management Unit (GMU), Allegan County GMU, Saginaw County GMU, and Muskegon Wastewater GMU.

**Minnesota**

*West Zone:* That portion of the State encompassed by a line beginning at the junction of State Trunk Highway (STH) 60 and the Iowa State line, then north and east along STH 60 to U.S. Highway 71, north along U.S. 71 to Interstate Highway 94, then north and west along I–94 to the North Dakota State line.

*West Central Zone:* That area encompassed by a line beginning at the intersection of State Trunk Highway (STH) 29 and U.S. Highway 212 and extending west along U.S. 212 to U.S. 59, south along U.S. 59 to STH 67, west along STH 67 to U.S. 75, north along U.S. 75 to County State Aid Highway (CSAH) 30 in Lac qui Parle County, west along CSAH 30 to the western boundary of the State, north along the western boundary of the State to a point due south of the intersection of STH 7 and CSAH 7 in Big Stone County, and continuing due north to said intersection, then north along CSAH 7 to CSAH 6 in Big Stone County, east along CSAH 6 to CSAH 21 in Big Stone County, south along CSAH 21 to CSAH 10 in Big Stone County, east along CSAH 10 to CSAH 22 in Swift County, east along CSAH 22 to CSAH 5 in Swift County, south along CSAH 5 to U.S. 12, east along U.S. 12 to CSAH 17 in Swift County, south along CSAH 17 to CSAH 9 in Chippewa County, south along CSAH 9 to STH 40, east along STH 40 to STH 29, then south along STH 29 to the point of beginning.

*Special Canada Goose Seasons:*

*Southeast Zone:* That part of the State within the following described boundaries: beginning at the intersection of U.S. Highway 52 and the south boundary of the Twin Cities Metro Canada Goose Zone; thence along the U.S. Highway 52 to State Trunk Highway (STH) 57; thence along STH 57 to the municipal boundary of Kasson; thence along the municipal boundary of Kasson County State Aid Highway (CSAH) 13, Dodge County; thence along CSAH 13 to STH 30; thence along STH 30 to U.S. Highway 63; thence along U.S. Highway 63 to the south boundary of the State; thence along the south and east boundaries of the State to the south boundary of the Twin Cities Metro Canada Goose Zone; thence along said boundary to the point of beginning.

**Missouri**

*Same zones as for ducks but in addition:*

*Middle Zone*

*Southeast Zone:* That portion of the State encompassed by a line beginning at the intersection of Missouri Highway (MO) 34 and Interstate 55 and extending south along I–55 to U.S. Highway 62, west along U.S. 62 to MO 53, north along MO 53 to MO 51, north along MO 51 to U.S. 60, west along U.S. 60 to MO 21, north along MO 21 to MO 72, east along MO 72 to MO 34, then east along MO 34 to I–55.

**Ohio**

*Same zones as for ducks but in addition:*

*North Zone*

*Lake Erie Zone:* That portion of the North Duck Zone encompassed by and north and east of a line beginning in Lucas County at the Michigan State line on I–75, and extending south along I–75 to I–280, south along I–280 to I–80, and east along I–80 to the Pennsylvania State line in Trumbull County.

**Tennessee**

*Southwest Zone:* That portion of the State south of State Highways 20 and 104, and west of U.S. Highways 45 and 45W.

*Northwest Zone:* Lake, Obion, and Weakley Counties and those portions of Gibson and Dyer Counties not included in the Southwest Tennessee Zone.

Kentucky/Barkley Lakes Zone: That portion of the State bounded on the west by the eastern boundaries of the Northwest and Southwest Zones and on the east by State Highway 13 from the Alabama State line to Clarksville and U.S. Highway 79 from Clarksville to the Kentucky State line.

**Wisconsin**

*Same zones as for ducks but in addition:*

*Horicon Zone:* That area encompassed by a line beginning at the intersection of State Highway 21 and the Fox River in Winnebago County and extending westerly along State 21 to the west boundary of Winnebago County, southerly along the west boundary of Winnebago County to the north boundary of Green Lake County, westerly along the north boundaries of Green Lake and Marquette Counties to State 22, southerly along State 22 to State 33, westerly along State 33 to Interstate Highway 39, southerly along Interstate Highway 39 to Interstate Highway 90/94, southerly along I–90/94 to State 60, easterly along State 60 to State 83, northerly along State 83 to State 175, northerly along State 175 to State 33, easterly along State 33 to U.S. Highway 45, northerly along U.S. 45 to the east shore of the Fond Du Lac River, northerly along the east shore of the Fond Du Lac River to Lake Winnebago, northerly along the western shoreline of Lake Winnebago to the Fox River, then westerly along the Fox River to State 21.

*Collins Zone:* That area encompassed by a line beginning at the intersection of Hilltop Road and Collins Marsh Road in Manitowoc County and extending westerly along Hilltop Road to Humpty Dumpty Road, southerly along Humpty Dumpty Road to Poplar Grove Road, easterly along Poplar Grove Road to Rockea Road, southerly along Rockea Road to County Highway JJ, southeasterly along County JJ to Collins Road, southerly along Collins Road to the Manitowoc River, southeasterly along the Manitowoc River to Quarry Road, northerly along Quarry Road to Einberger Road, northerly along Einberger Road to Moschel Road, westerly along Moschel Road to Collins Marsh Road, northerly along Collins Marsh Road to Hilltop Road.

*Exterior Zone:* That portion of the State not included in the Horicon or Collins Zones.

*Mississippi River Subzone:* That area encompassed by a line beginning at the intersection of the Burlington Northern & Santa Fe Railway and the Illinois State line in Grant County and extending northerly along the Burlington Northern & Santa Fe Railway to the city limit of Prescott in Pierce County, then west along the Prescott city limit to the Minnesota State line.

*Rock Prairie Subzone:* That area encompassed by a line beginning at the

intersection of the Illinois State line and Interstate Highway 90 and extending north along I–90 to County Highway A, east along County A to U.S. Highway 12, southeast along U.S. 12 to State Highway 50, west along State 50 to State 120, then south along 120 to the Illinois State line.

*Brown County Subzone:* That area encompassed by a line beginning at the intersection of the Fox River with Green Bay in Brown County and extending southerly along the Fox River to State Highway 29, northwesterly along State 29 to the Brown County line, south, east, and north along the Brown County line to Green Bay, due west to the midpoint of the Green Bay Ship Channel, then southwesterly along the Green Bay Ship Channel to the Fox River.

**Central Flyway**

*Colorado (Central Flyway Portion)*

*Northern Front Range Area:* All areas in Boulder, Larimer and Weld Counties from the Continental Divide east along the Wyoming border to U.S. 85, south on U.S. 85 to the Adams County line, and all lands in Adams, Arapahoe, Broomfield, Clear Creek, Denver, Douglas, Gilpin, and Jefferson Counties.

*North Park Area:* Jackson County.

*South Park and San Luis Valley Area:* All of Alamosa, Chaffee, Conejos, Costilla, Custer, Fremont, Lake, Park, Rio Grande and Teller Counties, and those portions of Saguache, Mineral and Hinsdale Counties east of the Continental Divide.

*Remainder:* Remainder of the Central Flyway portion of Colorado.

*Eastern Colorado Late Light Goose Area:* That portion of the State east of Interstate Highway 25.

**Nebraska**

*Dark Geese*

*Niobrara Unit:* That area contained within and bounded by the intersection of the South Dakota State line and the Cherry County line, south along the Cherry County line to the Niobrara River, east to the Norden Road, south on the Norden Road to U.S. Hwy 20, east along U.S. Hwy 20 to NE Hwy 137, north along NE Hwy 137 to the Niobrara River, east along the Niobrara River to the Boyd County line, north along the Boyd County line to the South Dakota State line. Where the Niobrara River forms the boundary, both banks of the river are included in the Niobrara Unit.

*East Unit:* That area north and east of U.S. 281 at the Kansas-Nebraska State line, north to Giltner Road (near Doniphan), east to NE 14, north to NE 66, east to U.S. 81, north to NE 22, west to NE 14, north to NE 91, east to U.S. 275, south to U.S. 77, south to NE 91, east to U.S. 30, east to Nebraska-Iowa State line.

*Platte River Unit:* That area south and west of U.S. 281 at the Kansas-Nebraska State line, north to Giltner Road (near Doniphan), east to NE 14, north to NE 66, east to U.S. 81, north to NE 22, west to NE 14, north to NE 91, west along NE 91 to NE 11, north to the Holt County line, west along the northern border of Garfield, Loup, Blaine and Thomas Counties to the Hooker County line, south along the Thomas-Hooker County lines to the McPherson County line, east along the south border of Thomas County to the western line of Custer County, south along the Custer-Logan County line to NE 92, west to U.S. 83, north to NE 92, west to NE 61, north along NE 61 to NE 2, west along NE 2 to the corner formed by Garden-Grant-Sheridan Counties, west along the north border of Garden, Morrill, and Scotts Bluff Counties to the intersection of the Interstate Canal, west to Wyoming State line.

*North-Central Unit:* The remainder of the State.

*Light Geese*

*Rainwater Basin Light Goose Area (West):* The area bounded by the junction of U.S. 283 and U.S. 30 at Lexington, east on U.S. 30 to U.S. 281, south on U.S. 281 to NE 4, west on NE 4 to U.S. 34, continue west on U.S. 34 to U.S. 283, then north on U.S. 283 to the beginning.

*Rainwater Basin Light Goose Area (East):* The area bounded by the junction of U.S. 281 and U.S. 30 at Grand Island, north and east on U.S. 30 to NE 14, south to NE 66, east to U.S. 81, north to NE 92, east on NE 92 to NE 15, south on NE 15 to NE 4, west on NE 4 to U.S. 281, north on U.S. 281 to the beginning.

*Remainder of State:* The remainder portion of Nebraska.

*New Mexico (Central Flyway Portion)*

Dark Geese

*Middle Rio Grande Valley Unit:* Sierra, Socorro, and Valencia Counties.

*Remainder:* The remainder of the Central Flyway portion of New Mexico.

*North Dakota*

*Missouri River Canada Goose Zone:* The area within and bounded by a line starting where ND Hwy 6 crosses the South Dakota border; thence north on ND Hwy 6 to I–94; thence west on I–94 to ND Hwy 49; thence north on ND Hwy 49 to ND Hwy 200; thence north on Mercer County Rd. 21 to the section line between sections 8 and 9 (T146N–R87W); thence north on that section line to the southern shoreline to Lake Sakakawea; thence east along the southern shoreline (including Mallard Island) of Lake Sakakawea to U.S. Hwy 83; thence south on U.S. Hwy 83 to ND Hwy 200; thence east on ND Hwy 200 to ND Hwy 41; thence south on ND Hwy 41 to U.S. Hwy 83; thence south on U.S. Hwy 83 to I–94; thence east on I–94 to U.S. Hwy 83; thence south on U.S. Hwy 83 to the South Dakota border; thence west along the South Dakota border to ND Hwy 6.

*Rest of State:* Remainder of North Dakota.

*South Dakota*

Canada Geese

*Unit 1:* Remainder of South Dakota.

*Unit 2:* Bon Homme, Brule, Buffalo, Charles Mix, Custer east of SD Hwy 79 and south of French Creek, Dewey south of U.S. Hwy 212, Fall River east of SD Hwy 71 and U.S. Hwy 385, Gregory, Hughes, Hyde south of U.S. Hwy 14, Lyman, Potter west of U.S. Hwy 83, Stanley, and Sully Counties.

*Unit 3:* Bennett County.

*Texas*

*Northeast Goose Zone:* That portion of Texas lying east and north of a line beginning at the Texas-Oklahoma border at U.S. 81, then continuing south to Bowie and then southeasterly along U.S. 81 and U.S. 287 to I–35W and I–35 to the juncture with I–10 in San Antonio, then east on I–10 to the Texas-Louisiana border.

*Southeast Goose Zone:* That portion of Texas lying east and south of a line beginning at the International Toll Bridge at Laredo, then continuing north following I–35 to the juncture with I–10 in San Antonio, then easterly along I–10 to the Texas-Louisiana border.

*West Goose Zone:* The remainder of the State.

*Wyoming (Central Flyway Portion)*

Dark Geese

*Area 1:* Converse, Hot Springs, Natrona, and Washakie Counties, and the portion of Park County east of the Shoshone National Forest boundary and south of a line beginning where the Shoshone National Forest boundary crosses Park County Road 8VC, easterly along said road to Park County Road 1AB, easterly along said road to Wyoming Highway 120, northerly along said highway to Wyoming Highway 294, southeasterly along said highway to Lane 9, easterly along said lane to the town of Powel and Wyoming Highway 14A, easterly along said highway to the Park County and Big Horn County Line.

*Area 2:* Albany, Campbell, Crook, Johnson, Laramie, Niobrara, Sheridan, and Weston Counties, and that portion of Carbon County east of the Continental Divide; that portion of Park County west of the Shoshone National Forest boundary, and that portion of Park County north of a line beginning where the Shoshone National Forest boundary crosses Park County Road 8VC, easterly along said road to Park County Road 1AB, easterly along said road to Wyoming Highway 120, northerly along said highway to Wyoming Highway 294, southeasterly along said highway to Lane 9, easterly along said lane to the town of Powel and Wyoming Highway 14A, easterly along said highway to the Park County and Big Horn County Line.

*Area 3:* Goshen and Platte Counties.

*Area 4:* Big Horn and Fremont Counties.

**Pacific Flyway**

*Arizona*

*North Zone:* Game Management Units 1–5, those portions of Game Management Units 6 and 8 within Coconino County, and Game Management units 7, 9, and 12A.

*South Zone:* Those portions of Game Management Units 6 and 8 in Yavapai County, and Game Management Units 10 and 12B–45.

*California*

*Northeastern Zone:* In that portion of California lying east and north of a line beginning at the intersection of Interstate 5 with the California-Oregon line; south along Interstate 5 to its junction with Walters Lane south of the town of Yreka; west along Walters Lane to its junction with Easy Street; south along Easy Street to the junction with Old Highway 99; south along Old Highway 99 to the point of intersection with Interstate 5 north of the town of Weed; south along Interstate 5 to its junction with Highway 89; east and south along Highway 89 to main street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California-Nevada State line; north along the California-Nevada State line to the junction of the California-Nevada-Oregon State lines west along the California-Oregon State line to the point of origin.

*Colorado River Zone:* Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as ''Aqueduct Road'' in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the ''Desert Center to Rice Road'' to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east 7 miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

*Southern Zone:* That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada border.

*Imperial County Special Management Area:* The area bounded by a line beginning at Highway 86 and the Navy Test Base Road; south on Highway 86 to the town of Westmoreland; continue through the town of Westmoreland to Route S26; east on Route S26 to Highway 115; north on Highway 115 to Weist Rd.; north on Weist Rd. to Flowing Wells Rd.; northeast on Flowing Wells Rd. to the Coachella Canal; northwest on the Coachella Canal to Drop 18; a straight line from Drop 18 to Frink Rd.; south on Frink Rd. to Highway 111; north on Highway 111 to Niland Marina Rd.; southwest on Niland Marina Rd. to the old Imperial County boat ramp and the water line of the Salton Sea; from the water line of the Salton Sea, a straight line across the Salton Sea to the Salinity Control Research Facility and the Navy Test Base Road; southwest on the Navy Test Base Road to the point of beginning.

*Balance-of-the-State Zone:* The remainder of California not included in the Northeastern, Southern, and the Colorado River Zones.

*North Coast Special Management Area:* The Counties of Del Norte and Humboldt.

*Sacramento Valley Special Management Area (West):* That area bounded by a line beginning at Willows south on I–5 to Hahn Road; easterly on Hahn Road and the Grimes-Arbuckle Road to Grimes; northerly on CA 45 to the junction with CA 162; northerly on CA 45/162 to Glenn; and westerly on CA 162 to the point of beginning in Willows.

*Colorado (Pacific Flyway Portion)*

*West Central Area:* Archuleta, Delta, Dolores, Gunnison, LaPlata, Montezuma, Montrose, Ouray, San Juan, and San Miguel Counties and those portions of Hinsdale, Mineral, and Saguache Counties west of the Continental Divide.

*State Area:* The remainder of the Pacific Flyway portion of Colorado.

*Idaho*

*Zone 1:* Adams, Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, Shoshone, and Valley Counties.

*Zone 2:* The Counties of Ada; Boise; Canyon; those portions of Elmore north and east of I–84, and south and west of I–84, west of ID 51, except the Camas Creek drainage; Gem; Owyhee west of ID 51; Payette; and Washington.

*Zone 3:* The Counties of Cassia except the Minidoka National Wildlife Refuge; those portions of Elmore south of I–84 east of ID 51, and within the Camas Creek drainage; Gooding; Jerome; Lincoln; Minidoka; Owyhee east of ID 51; and Twin Falls.

*Zone 4:* The Counties of Bear Lake; Bingham within the Blackfoot Reservoir drainage; Blaine; Camas; Bonneville; Butte; Caribou except the Fort Hall Indian Reservation; Cassia within the Minidoka National Wildlife Refuge; Clark; Custer; Franklin; Fremont; Jefferson; Lemhi; Madison; Oneida; and Teton.

*Zone 5:* All lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County.

*Montana (Pacific Flyway Portion)*

*East of the Divide Zone:* The Pacific Flyway portion of the State located east of the Continental Divide.

*West of the Divide Zone:* The remainder of the Pacific Flyway portion of Montana.

*Nevada*

*Lincoln Clark County Zone:* All of Lincoln and Clark Counties.

*Remainder-of-the-State Zone:* The remainder of Nevada.

*New Mexico (Pacific Flyway Portion)*

*North Zone:* The Pacific Flyway portion of New Mexico located north of I–40.

*South Zone:* The Pacific Flyway portion of New Mexico located south of I–40.

*Oregon*

*Southwest Zone:* Those portions of Douglas, Coos, and Curry Counties east of Highway 101, and Josephine and Jackson Counties.

*South Coast Zone:* Those portions of Douglas, Coos, and Curry Counties west of Highway 101.

*Northwest Special Permit Zone:* That portion of western Oregon west and north of a line running south from the Columbia River in Portland along I–5 to OR 22 at Salem; then east on OR 22 to the Stayton Cutoff; then south on the Stayton Cutoff to Stayton and due south to the Santiam River; then west along the north shore of the Santiam River to I–5; then south on I–5 to OR 126 at Eugene; then west on OR 126 to Greenhill Road; then south on Greenhill Road to Crow Road; then west on Crow Road to Territorial Hwy; then west on Territorial Hwy to OR 126; then west on OR 126 to Milepost 19, north to the intersection of the Benton and Lincoln County line, north along the western boundary of Benton and Polk Counties to the southern boundary of Tillamook County, west along the Tillamook County boundary to the Pacific Coast.

*Lower Columbia/N. Willamette Valley Management Area:* Those portions of Clatsop, Columbia, Multnomah, and Washington Counties within the Northwest Special Permit Zone.

*Tillamook County Management Area:* All of Tillamook County is open to goose hunting except for the following area—beginning in Cloverdale at Hwy 101, west on Old Woods Rd to Sand Lake Rd at Woods, north on Sand Lake Rd to the intersection with McPhillips Dr, due west (~200 yards) from the intersection to the Pacific coastline, south on the Pacific coastline to Neskowin Creek, east along the north shores of Neskowin Creek and then Hawk Creek to Salem Ave, east on Salem Ave in Neskowin to Hawk Ave, east on Hawk Ave to Hwy 101, north on Hwy 101 at Cloverdale, point of beginning.

*Northwest Zone:* Those portions of Clackamas, Lane, Linn, Marion, Multnomah, and Washington Counties outside of the Northwest Special Permit Zone and all of Lincoln County.

*Eastern Zone:* Hood River, Wasco, Sherman, Gilliam, Morrow, Umatilla, Deschutes, Jefferson, Crook, Wheeler, Grant, Baker, Union, and Wallowa Counties.

*Harney, Lake, and Malheur County Zone:* All of Harney, Lake, and Malheur Counties.

*Klamath County Zone:* All of Klamath County.

*Utah*

*Northern Utah Zone:* All of Cache and Rich Counties, and that portion of Box Elder County beginning at I–15 and the Weber-Box Elder County line; east and north along this line to the Weber-Cache County line; east along this line to the Cache-Rich County line; east and south along the Rich County line to the Utah-Wyoming State line; north along this line to the Utah-Idaho State line; west on this line to Stone, Idaho-Snowville, Utah road; southwest on this road to Locomotive Springs Wildlife Management Area; east on the county road, past Monument Point and across Salt Wells Flat, to the intersection with Promontory Road; south on Promontory Road to a point directly west of the northwest corner of the Bear River Migratory Bird Refuge boundary; east along an imaginary line to the northwest corner of the Refuge boundary; south and east along the Refuge boundary to the southeast corner of the boundary; northeast along the boundary to the Perry access road; east on the Perry access road to I–15; south on I–15 to the Weber-Box Elder County line.

*Remainder-of-the-State Zone:* The remainder of Utah.

*Washington*

*Area 1:* Skagit, Island, and Snohomish Counties.

*Area 2A (SW Quota Zone):* Clark County, except portions south of the Washougal River; Cowlitz and Wahkiakum Counties.

*Area 2B (SW Quota Zone):* Pacific County.

*Area 3:* All areas west of the Pacific Crest Trail and west of the Big White Salmon River that are not included in Areas 1, 2A, and 2B.

*Area 4:* Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla Counties.

*Area 5:* All areas east of the Pacific Crest Trail and east of the Big White Salmon River that are not included in Area 4.

**Brant**

*Pacific Flyway*

California

*North Coast Zone:* Del Norte, Humboldt and Mendocino Counties.

*South Coast Zone:* Balance of the State.

Washington

*Puget Sound Zone:* Skagit County.

*Coastal Zone:* Pacific County.

**Swans**

*Central Flyway*

*South Dakota:* Aurora, Beadle, Brookings, Brown, Brule, Buffalo, Campbell, Clark, Codington, Davison, Deuel, Day, Edmunds, Faulk, Grant, Hamlin, Hand, Hanson, Hughes, Hyde, Jerauld, Kingsbury, Lake, Marshall, McCook, McPherson, Miner, Minnehaha, Moody, Potter, Roberts, Sanborn, Spink, Sully, and Walworth Counties.

**Pacific Flyway**

*Montana (Pacific Flyway Portion)*

*Open Area:* Cascade, Chouteau, Hill, Liberty, and Toole Counties and those portions of Pondera and Teton Counties lying east of U.S. 287–89.

*Nevada*

*Open Area:* Churchill, Lyon, and Pershing Counties.

*Utah*

*Open Area:* Those portions of Box Elder, Weber, Davis, Salt Lake, and Toole Counties lying west of I–15, north of I–80 and south of a line beginning from the Forest Street exit to the Bear River National Wildlife Refuge boundary, then north and west along the Bear River National Wildlife Refuge boundary to the farthest west boundary of the Refuge, then west along a line to Promontory Road, then north on Promontory Road to the intersection of SR 83, then north on SR 83 to I–84, then north and west on I–84 to State Hwy 30, then west on State Hwy 30 to the Nevada-Utah State line, then south on the Nevada-Utah State line to I–80.

[FR Doc. E8–20100 Filed 8–28–08; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Friday,
August 29, 2008

# Part IV

# Department of the Interior

## Fish and Wildlife Service

**50 CFR Part 32**

**2008–2009 Refuge-Specific Hunting and Sport Fishing Regulations (Additions); Final Rule**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 32**

**[FWS–R9–WSR–2008–0017; 93250–1261–0000–4A]**

**RIN 1018–AV20**

## 2008–2009 Refuge-Specific Hunting and Sport Fishing Regulations (Additions)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Fish and Wildlife Service adds one refuge to the list of areas open for hunting and/or sport fishing programs and increases the activities available at six other refuges for the 2008–2009 season.

**DATES:** This rule is effective on August 29, 2008.

**FOR FURTHER INFORMATION CONTACT:** Leslie A. Marler, Management Analyst, Division of Conservation Planning and Policy, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 670, Arlington, VA 22203; (703) 358–2397; Fax (703) 358–2248.

**SUPPLEMENTARY INFORMATION:** The National Wildlife Refuge System Administration Act of 1966 closes national wildlife refuges in all States except Alaska to all uses until opened. The Secretary of the Interior (Secretary) may open refuge areas to any use, including hunting and/or sport fishing, upon a determination that such uses are compatible with the purposes of the refuge and National Wildlife Refuge System (Refuge System or our/we) mission. The action also must be in accordance with provisions of all laws applicable to the areas, developed in coordination with the appropriate State fish and wildlife agency(ies), consistent with the principles of sound fish and wildlife management and administration, and otherwise in the public interest. These requirements ensure that we maintain the biological integrity, diversity, and environmental health of the Refuge System for the benefit of present and future generations of Americans.

We review refuge hunting and sport fishing programs to determine whether to include additional refuges or whether individual refuge regulations governing existing programs need modifications. Changing environmental conditions, State and Federal regulations, and other factors affecting fish and wildlife populations and habitat may warrant modifications to refuge-specific regulations to ensure the continued compatibility of hunting and sport fishing programs and to ensure that these programs will not materially interfere with or detract from the fulfillment of refuge purposes or the Refuge System's mission.

Provisions governing hunting and sport fishing on refuges are in title 50 of the Code of Federal Regulations in part 32 (50 CFR part 32). We regulate hunting and sport fishing on refuges to:

- Ensure compatibility with refuge purpose(s);
- Properly manage the fish and wildlife resource(s);
- Protect other refuge values;
- Ensure refuge visitor safety; and
- Provide opportunities for quality fish and wildlife-dependent recreation.

On many refuges where we decide to allow hunting and sport fishing, our general policy of adopting regulations identical to State hunting and sport fishing regulations is adequate in meeting these objectives. On other refuges, we must supplement State regulations with more-restrictive Federal regulations to ensure that we meet our management responsibilities, as outlined in the ''Statutory Authority'' section. We issue refuge-specific hunting and sport fishing regulations when we open wildlife refuges to migratory game bird hunting, upland game hunting, big game hunting, or sport fishing. These regulations list the wildlife species that you may hunt or fish, along with seasons, bag or creel limits, methods of hunting or sport fishing, descriptions of areas open to hunting or sport fishing, and other provisions as appropriate. You may find previously issued refuge-specific regulations for hunting and sport fishing in 50 CFR part 32. In this rulemaking, we are also standardizing and clarifying the language of existing regulations.

### Plain Language Mandate

In this rule, we made some of the revisions to the individual refuge units to comply with a Presidential mandate to use plain language in regulations; as such, these particular revisions do not modify the substance of the previous regulations. These types of changes include using ''you'' to refer to the reader and ''we'' to refer to the Refuge System, using the word ''allow'' instead of ''permit'' when we do not require the use of a permit for an activity, and using active voice (i.e., ''We restrict entry into the refuge'' vs. ''Entry into the refuge is restricted'').

### Statutory Authority

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee, as amended by the National Wildlife Refuge System Improvement Act of 1997 [Improvement Act]) (Administration Act) and the Refuge Recreation Act of 1962 (16 U.S.C. 460k–460k–4) (Recreation Act) govern the administration and public use of refuges.

Amendments enacted by the Improvement Act built upon the Administration Act in a manner that provides an ''organic act'' for the Refuge System similar to those that exist for other public Federal lands. The Improvement Act serves to ensure that we effectively manage the Refuge System as a national network of lands, waters, and interests for the protection and conservation of our Nation's wildlife resources. The Administration Act states first and foremost that we focus our Refuge System mission on conservation of fish, wildlife, and plant resources and their habitats. The Improvement Act requires the Secretary, before allowing a new use of a refuge, or before expanding, renewing, or extending an existing use of a refuge, to determine that the use is compatible with the mission for which the refuge was established. The Improvement Act established as the policy of the United States that wildlife-dependent recreation, when compatible, is a legitimate and appropriate public use of the Refuge System, through which the American public can develop an appreciation for fish and wildlife. The Improvement Act established six wildlife-dependent recreational uses, when compatible, as the priority general public uses of the Refuge System. These uses are: hunting, fishing, wildlife observation and photography, and environmental education and interpretation.

The Recreation Act authorizes the Secretary to administer areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that doing so is practicable and not inconsistent with the primary purpose(s) for which Congress and the Service established the areas. The Recreation Act requires that any recreational use of refuge lands be compatible with the primary purpose(s) for which we established the refuge and not inconsistent with other previously authorized operations.

The Administration Act and Recreation Act also authorize the Secretary to issue regulations to carry out the purposes of the Acts and regulate uses.

We develop specific management plans for each refuge prior to opening it to hunting or sport fishing. In many cases, we develop refuge-specific

regulations to ensure the compatibility of the programs with the purpose(s) for which we established the refuge and the Refuge System mission. We ensure initial compliance with the Administration Act and the Recreation Act for hunting and sport fishing on newly acquired refuges through an interim determination of compatibility made at or near the time of acquisition. These regulations ensure that we make the determinations required by these acts prior to adding refuges to the lists of areas open to hunting and sport fishing in 50 CFR part 32. We ensure continued compliance by the development of comprehensive conservation plans, specific plans, and by annual review of hunting and sport fishing programs and regulations.

**Response to Comments Received**

In the June 11, 2008, **Federal Register** (73 FR 33202) we published a proposed rulemaking identifying refuges and their proposed hunting and/or fishing programs and invited public comments. We reviewed and considered all comments received by July 11, 2008, following a 30-day comment period.

We received 16 comments on the proposed rule, 7 opposed and 9 in support of the rulemaking. We have synthesized these comments into four general comments for our response.

*Comment 1:* Several commenters expressed concern about the opening of Hamden Slough NWR to deer hunting.

*Response 1:* Land use surrounding the refuge is primarily agricultural; however, approximately 5,500 acres of federally managed waterfowl production areas, and State-managed wildlife management areas are found in the three-township area surrounding the refuge. While we agree that deer populations are ultimately limited by the amount of available habitat, we do not believe that the opening of Hamden Slough to muzzleloader hunting will dramatically lower deer populations given the historical harvest rates associated with this season. Due to its limited size, Hamden Slough does not support an isolated or unique population of deer. We manage deer utilizing the refuge as a broader population of deer in this hunting unit by the Minnesota Department of Natural Resources. No changes were made to the rule as a result of these comments.

*Comment 2:* Also specific to Hamden Slough, one commenter asked about the extent of public notification, the impact on the local pheasant population, how much public hunting land is available in the immediate area, and questionable hunting techniques (shooting from roads, trespassing).

*Response 2a:* Public notification: Prior to public review of the Hunt Plan, Environmental Assessment, and Compatibility Determination, we notified the public via newspaper, radio and other media regarding a public meeting on November 30, 2004, to review opening the refuge to hunting and also to propose various refuge hunting options. At the meeting, we gave the public the opportunity to make comments on both opening the refuge to hunting and the types of hunting desired. Following the meeting, a public comment period lasted from November 30, 2004 to December 15, 2004. We received comments or letters from 23 respondents, of which a majority favored either limited waterfowl hunting or limited deer hunting. Some respondents recommended either the waterfowl or deer hunt but were opposed to the other. Most expressed concern about wildlife disturbance and the effect on hunting on nearby private and public lands. We maintain recorded public comments and letters for review at the refuge office.

After we received initial public comments from the November 2004, public meeting, on December 17, 2004, we placed a draft Hunting Plan, draft Hunting Environmental Assessment, and draft Compatibility Determination at the Detroit Lakes Public Library. Legal notification and news articles on December 19 and 22, 2004, informed the public that the hunting proposal documents were available for review, and that we would receive additional public comments through January 10, 2005. We received two comments: one from the White Earth Reservation Tribal Council and one from the Minnesota Department of Natural Resources. We received no comments from the general public.

On November 4, 2005, we posted a second comment period for review at the Detroit Lakes Public Library and refuge headquarters. Legal notification and news articles on November 3 and November 6, 2005, informed the public that the hunting proposal documents were available for review and that we would receive additional public comments through December 9, 2005. During this second comment period, the public had the opportunity to review and comment for 35 days. We received no public comments during this second comment period.

On February 15, 2007, we posted a third comment period for review at the Detroit Lakes Public Library and Detroit Lakes Wetland Management District headquarters. Legal notification on February 14 and 17, 2007, informed the public that a revised Environmental Assessment of the hunting proposal was available for review, and that we would receive additional public comments through March 17, 2007. During the third comment period, the public had the opportunity to review and comment (written or by phone) a period of 30 days. Again, we received no public comments during this third comment period.

*Response 2b:* Impacts of this hunt on other wildlife, including pheasants: Given the limited duration of these hunting seasons (1 day youth waterfowl and 15 day late-season muzzleloader hunts), we do not anticipate significant disturbance to migratory birds or other wildlife.

*Response 2c:* How much public hunting land is available in the immediate area: As addressed in Response 1 above, there are other locations next to the refuge that are open to public hunting. These acres equate to approximately 8 percent of the total area contained within the three townships surrounding the refuge. With the addition of the Hamden Slough fee-owned lands to the above acreage, this would bring the total available publicly owned lands open to hunting in the three-township area surrounding the refuge from the current 8 percent to 13 percent.

*Response 2d:* Questionable hunting techniques: One of the considerations covered in opening package documents before we make a decision to open an area to hunting is the availability of our refuge law enforcement officers during the hunt period. As with any other hunt conducted within the Refuge System, our refuge law enforcement personnel will work in concert with State game officials to enforce the laws and our regulations during the hunt period. No changes were made to the rule as a result of any of these comments.

*Comment 3:* A commenter objected to all openings in this rulemaking citing the 2003 Fund for Animals lawsuit (still pending) and incorporated all comments relative to that case to this rulemaking. They further stated that the revised environmental assessments (EAs) prepared for this rulemaking ''are nearly identical to, or in many cases exactly the same as, the NEPA documents for these same refuges that were published in 2007 and submitted to the court.'' Essentially the commenter objects to the openings/expansions and believes that this rulemaking represents ''a continuing violation of federal law, including NEPA, given the Service's ongoing failure to prepare Environmental Impact Statements (EIS) on its national wildlife refuge sport-

hunting program or, more broadly, its overall refuge recreation program.''

*Response 3:* We disagree. On July 24, 2006, the Service published a proposed rule (71 FR 41864) that would have opened for the first time one refuge to a variety of hunting opportunities and expanded hunting opportunities at six other refuges already open to hunting. It also modified rules regarding hunt programs on other refuges. Because of the District Court's August 31, 2006, ruling, we refrained from final publication because the hunt opening contained in that proposal was developed under the same NEPA procedure used for the refuges that are the subject of the current litigation. Subsequently, we removed the hunt opening and the expansions and published them as a separate proposed rule on June 11, 2008, following a re-examination and amendment of all affected EAs. The resulting EAs are detailed, extensive analyses of the impact of hunting and/or the loss of hunting on each refuge. They consider the cumulative hunting opportunities throughout the State, the region, and the migratory bird flyway where the refuge is. Although the documents bear some similarities, they also contained varied, and often unique discussions on the environmental impact of the opportunities presented on specific refuges, based on the State, region, and/or flyway in which the refuge is located, and/or the wildlife that reside in and/or use the refuge. Collectively, these amended EAs address each and every aspect of complete NEPA compliance. Therefore, we believe this action is not in conflict with the Court's August 31, 2006, ruling because the NEPA compliance process used for these actions is significantly different from, and additive to, that used to cure the cumulative effects defects the Court found in the litigation's original six rules and in the three rules added to the case last fall. No change was made to this rulemaking as a result of this comment.

*Comment 4:* Several commenters expressed opposition to opening refuges to hunting and fishing and believe refuges should offer protection and safe haven for wildlife.

*Response 4:* We disagree. The 1997 National Wildlife Refuge System Improvement Act which amended the National Wildlife Refuge System Administration Act stipulates that hunting (along with fishing, wildlife observation and photography, and environmental education and interpretation), if found to be compatible, is a legitimate and priority general public use of a refuge that should be facilitated. The Administration Act authorizes the Secretary to allow use of any refuge area for any purpose as long as those uses are compatible. In the case of each refuge opening/expansion in this rule, the refuge managers went through the compatibility process to make this determination before opening/expanding their refuge. No change was made to this rulemaking as a result of this comment.

**Effective Date**

This rule is effective upon publication in the **Federal Register**. We have determined that any further delay in implementing these refuge-specific hunting and sport fishing regulations would not be in the public interest, in that a delay would hinder the effective planning and administration of the hunting and fishing programs. We provided a 30-day comment period for the June 11, 2008, proposed rule. An additional delay would jeopardize holding the hunting and/or fishing programs this year or shorten their duration and thereby lessen the management effectiveness of this regulation. This rule does not impact the public generally in terms of requiring lead time for compliance. Rather it relieves restrictions in that it allows activities on refuges that we would otherwise prohibit. Therefore, we find good cause under 5 U.S.C. 553(d)(3) to make this rule effective upon date of filing.

**New Hunting and Sport Fishing Programs**

In preparation for new openings, we prepare and approve, at the appropriate Regional Office and in Washington, documentation of National Environmental Policy Act (NEPA) and the Endangered Species Act; and we consult with the State and, where appropriate, Tribal wildlife management agency. The Regional Director(s) certify that the opening of these refuges to hunting and/or sport fishing is found to be compatible with the purpose(s) for which the respective refuge(s) were established and the Refuge System mission. You may request copies of the compatibility determinations for these respective refuges from the regional office noted under the heading ''Available Information for Specific Refuges.''

The annotated chart below summarizes our changes. The key below the chart explains the symbols used:

TABLE 1—CHANGES FOR 2008–2009 HUNTING/FISHING

| National Wildlife Refuge | State | Migratory bird hunting | Upland hunting | Big game hunting | Fishing |
|---|---|---|---|---|---|
| Agassiz | MN | B | B | Previously published. | |
| Hamden Slough | MN | A | | A. | |
| Blackwater | MD | B | B | Previously published | Previously published. |
| Whittlesey Creek | WI | Previously published | | B. | |
| Tensas River | LA | D | D | D | Previously published. |
| Upper Ouachita | LA | D | D | C/D | D. |

A = Refuge added and activities opened.
B = Refuge already listed; added hunt category.
C = Refuge already listed; added species to hunt category.
D = Refuge already listed and opened to this activity; added land.

We are adding one refuge to the list of areas open for hunting and/or sport fishing and increasing opportunities at six refuges. We proposed these changes in the 2006–2007 refuge-specific regulations (71 FR 41864, July 24, 2006) but did not finalize them. This rulemaking does that. We have made significant changes to the analysis of impacts under the requirements of the National Environmental Policy Act (NEPA) to address inadequacies in our ''opening'' process found by Judge Ricardo Urbina in his ruling in *The Fund for Animals* v. *Dale Hall,* 448 F. Supp. 2d.127, August 31, 2006. We believe that our new NEPA analysis satisfies our legal requirements. Due to the delays experienced because of the lawsuit, no rulemakings were published for the 2007–2008 season.

Bayou Cocodrie National Wildlife Refuge in the State of Louisiana added new lands available to all existing opportunities, but this did not result in any regulatory changes.

We are removing Stillwater Management Area in the State of Nevada from the list of refuges in 50 CFR part 32. The Bureau of Reclamation holds primary jurisdiction over these lands by virtue of a public lands withdrawal for drainage for the 1902 Newlands Reclamation Project. The 1948 Tripartie Agreement with the Service, Nevada Board of Fish and Game Commissioners (Nevada), and the Truckee-Carson Irrigation District (Truckee-Carson) expired and has not been renewed.

We have cross-referenced a number of existing regulations in 50 CFR parts 26, 27, and 32 to assist hunting and sport fishing visitors with understanding safety and other legal requirements on refuges. This redundancy is deliberate, with the intention of improving safety and compliance in our hunting and sport fishing programs.

**Fish Advisory**

For health reasons, anglers should review and follow State-issued consumption advisories before enjoying recreational sport fishing opportunities on Service-managed waters. You can find information about current fish consumption advisories on the Internet at: *http://www.epa.gov/ost/fish/*.

**Regulatory Planning and Review**

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this rule under Executive Order 12866 (E.O. 12866). OMB bases its determination on the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, use fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

**Regulatory Flexibility Act**

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act [SBREFA] of 1996) (5 U.S.C. 601 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for ''significant impact'' and a threshold for a ''substantial number of small entities.'' See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

This rule does not increase the number of recreation types allowed on the System but establishes a hunting program on one refuge and expands activities at six other refuges. As a result, opportunities for wildlife-dependent recreation on national wildlife refuges will increase. The changes in the number of allowed use(s) are likely to increase visitor activity on these national wildlife refuges. Recreational user days are expected to increase by 475 fishing days and 8,352 hunting days. However, this is likely to be a substitute site for the activity and not necessarily an overall increase in participation rates for the activity.

New recreational user days generate expenditures associated with recreational activities on refuges' wilderness areas. Due to the unavailability of site-specific expenditure data, we use the national estimates from the 2001 National Survey of Fishing, Hunting, and Wildlife Associated Recreation to identify expenditures for food and lodging, transportation, and other incidental expenses. Using the average expenditures for these categories with the maximum expected additional participation on the Refuge System yields approximately $68,700 in fishing-related expenditures and $831,300 in hunting-related expenditures.

By having ripple effects throughout the economy, these direct expenditures are only part of the economic impact of recreational user days. Using a national impact multiplier for hunting activities (2.73) derived from the report ''Economic Importance of Hunting in America'' and a national impact multiplier for sportfishing activities (2.79) from the report ''Sportfishing in America'' for the estimated increase in direct expenditures yields a total economic impact of approximately $2.4 million (2006 dollars) (Southwick Associates, Inc., 2003). (Using a local impact multiplier would yield more accurate and smaller results. However, we employed the national impact multiplier due to the difficulty in developing local multipliers for each specific region.)

Since most of the fishing and hunting occurs within 100 miles of a participant's residence, it is unlikely that most of this spending would be ''new'' money coming into a local economy; therefore, this spending would be offset with a decrease in some other sector of the local economy. The net gain to the local economies would be no more than $2.5 million, and most likely considerably less. Since 80 percent of the participants travel fewer than 100 miles to engage in hunting and fishing activities, their spending patterns would not add new money into the local economy and, therefore, the real impact would be on the order of $488,000 annually.

To the extent visitors spend time and money in the area of the refuge that they would not have spent there anyway, they contribute new income to the regional economy and benefit local businesses. Many small businesses within the retail trade industry (such as hotels, gas stations, taxidermy shops, bait and tackle shops) may benefit from some increased refuge visitation. A large percentage of these retail trade establishments in the majority of affected counties qualify as small businesses (Table 2).

We expect that the incremental recreational opportunities will be scattered, and so we do not expect that the rule will have a significant economic effect (benefit) on a substantial number of small entities in any region or nationally. Using the estimate derived in the *Regulatory Planning and Review* section, we expect approximately $488,000 to be spent in total in the refuges' local economies. The maximum increase ($2.4 million if all spending were new money) at most would be less than 1 percent for local retail trade spending (Table 2).

TABLE 2—COMPARATIVE EXPENDITURES FOR RETAIL TRADE ASSOCIATED WITH ADDITIONAL REFUGE VISITATION FOR 2008–2009

[2005 dollars in thousands]

| Refuge/county(ies) | Retail trade in 2002 | Estimated maximum addition from new activities | Addition as a percent of total | Total number retail establish. | Establish. with <10 emp. |
|---|---|---|---|---|---|
| Agassiz: | | | | | |
| Marshall, MN | $80,352 | $4 | 0.005 | 43 | 35 |
| Hamden Slough: | | | | | |
| Becker, MN | 351,508 | 16 | 0.005 | 159 | 117 |
| Blackwater: | | | | | |
| Dorchester, MD | 259,667 | 48 | 0.018 | 123 | 91 |
| Whittlesey Creek: | | | | | |
| Ashland, WI | 185,394 | 2 | 0.001 | 94 | 70 |
| Bayou Cocodrie: | | | | | |
| Concordia, LA | 135,975 | 63 | 0.047 | 82 | 60 |
| Tensas River: | | | | | |
| Franklin, LA | 205,637 | 53 | 0.026 | 83 | 63 |
| Madison, LA | 78,207 | 53 | 0.068 | 42 | 31 |
| Tensas, LA | 23,931 | 53 | 0.222 | 26 | 22 |
| Upper Ouachita: | | | | | |
| Morehouse, LA | 231,753 | 76 | 0.033 | 115 | 91 |
| Union, LA | 127,496 | 76 | 0.059 | 70 | 57 |

With the small increase in overall spending anticipated from this rule, it is unlikely that a substantial number of small entities will have more than a small benefit from the increased spending near the affected refuges. Therefore, we certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial/final Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

**Small Business Regulatory Enforcement Fairness Act**

The rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. We anticipate no significant employment or small business effects. This rule:

a. Would not have an annual effect on the economy of $100 million or more. The additional fishing and hunting opportunities at these refuges would generate angler and hunter expenditures with an economic impact estimated at $2.4 million per year (2006 dollars). Consequently, the maximum benefit of this rule for businesses both small and large would not be sufficient to make this a major rule. The impact would be scattered across the country and would most likely not be significant in any local area.

b. Would not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. This rule would have only a slight effect on the costs of hunting and fishing opportunities for Americans. Under the assumption that any additional hunting and fishing opportunities would be of high quality, participants would be attracted to the refuge. If the refuge were closer to the participants' residences, then a reduction in travel costs would occur and benefit the participants. The Service does not have information to quantify this reduction in travel cost but assumes that, since most people travel less than 100 miles to hunt and fish, the reduced travel cost would be small for the additional days of hunting and fishing generated by this rule. We do not expect this rule to affect the supply or demand for fishing and hunting opportunities in the United States and, therefore, it should not affect prices for fishing and hunting equipment and supplies, or the retailers that sell equipment. Additional refuge hunting and fishing opportunities would account for less than 0.001 percent of the available opportunities in the United States.

c. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. This rule represents only a small proportion of recreational spending of a small number of affected anglers and hunters, approximately a maximum of $2.4 million annually in impact. Therefore, this rule would have no measurable economic effect on the wildlife-dependent industry, which has annual sales of equipment and travel expenditures of $72 billion nationwide. Refuges that establish hunting and fishing programs may hire additional staff from the local community to assist with the programs, but this would not be a significant increase because we are opening only one refuge to hunting and only six refuges are increasing activities by this rule.

**Unfunded Mandates Reform Act**

Since this rule would apply to public use of federally owned and managed refuges, it would not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule would not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

**Takings (E.O. 12630)**

In accordance with E.O. 12630, this rule would not have significant takings implications. This regulation would affect only visitors at national wildlife refuges and describe what they can do while they are on a refuge.

**Federalism (E.O. 13132)**

As discussed in the Regulatory Planning and Review and Unfunded Mandates Reform Act sections above, this rule would not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment under E.O. 13132. In preparing this rule, we worked with State governments.

**Civil Justice Reform (E.O. 12988)**

In accordance with E.O. 12988, the Office of the Solicitor has determined that the rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. The regulation would clarify established regulations and result in better understanding of the regulations by refuge visitors.

**Energy Supply, Distribution or Use (E.O. 13211)**

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule would add one refuge to the list of areas open for hunting and increase the activities at six refuges, it is not a significant regulatory action under E.O. 12866 and is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action and no Statement of Energy Effects is required.

**Consultation and Coordination With Indian Tribal Governments (E.O. 13175)**

In accordance with E.O. 13175, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects. We coordinate recreational use on national wildlife refuges with Tribal governments having adjoining or overlapping jurisdiction before we propose the regulations.

**Paperwork Reduction Act**

This regulation does not contain any information collection requirements other than those already approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (OMB Control Number is 1018–0102). See 50 CFR 25.23 for information concerning that approval. 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. We are currently seeking OMB approval for other necessary information collection.

**Endangered Species Act Section 7 Consultation**

In preparation for new openings, we comply with Section 7 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*; ESA). Copies of the Section 7 evaluations may be obtained by contacting the regions listed under *Available Information for Specific Refuges*. For the new openings or additional opportunities at national wildlife refuges for hunting and/or fishing, we have determined that at Hamden Slough National Wildlife Refuge, and Tensas River National Wildlife Refuge, the actions are not likely to adversely affect listed species or designated critical habitat. For the openings at Whittlesey Creek National Wildlife Refuge and Blackwater National Wildlife Refuge, we have determined the actions will have no affect on any listed species or critical habitat. For Bayou Cocodrie National Wildlife Refuge, Upper Ouachita National Wildlife Refuge, and Agassiz National Wildlife Refuge, we have determined the actions may affect but are not likely to adversely affect listed species/critical habitat.

We also comply with Section 7 of the ESA when we develop comprehensive conservation plans (CCPs) and step-down management plans for public use of refuges, and before implementing any new or revised public recreation program on a refuge as identified in 50 CFR 26.32.

**National Environmental Policy Act**

Based upon review of the refuge-specific Environmental Assessments for the opening of new or expansion of existing hunting programs on 7 national wildlife refuges (Agassiz NWR, Hamden Slough NWR, Blackwater NWR, Whittlesey Creek, Bayou Cocodrie NWR, Tensas River NWR, and Upper Ouachita NWR), and of associated documentation referenced below, it is our determination that the action of opening or expanding hunting programs on these 7 refuges as described and which will be codified by rulemaking in 2008, does not constitute a major Federal action significantly affecting the quality of the human environment under the meaning of section 102(2)(c) of the National Environment Policy Act of 1969 (as amended) (42 U.S.C. 4321 *et seq.*). As such, an environmental impact statement is not required.

We have prepared a Cumulative Impact Report that analyzes the cumulative impacts of these openings. In this Report we evaluate cumulative impacts within the context of the new and expanded hunting and fishing programs on the seven refuges combined and within the context of hunting and fishing programs on the Refuge System as a whole.

Prior to the addition of a refuge to the list of areas open to hunting and fishing in 50 CFR part 32, we develop hunting and fishing plans for the affected refuges. We incorporate these refuge hunting and fishing activities in the refuge CCPs and/or other step-down management plans, pursuant to our refuge planning guidance in 602 Fish and Wildlife Service Manual (FW) 1, 3, and 4. We prepare these CCPs and step-down plans in compliance with section 102(2)(C) of NEPA and the Council on Environmental Quality's regulations for implementing NEPA in 40 CFR parts 1500–1508. We invite the affected public to participate in the review, development, and implementation of these plans. Copies of all plans and NEPA compliance are available from the refuges at the addresses provided below.

**Available Information for Specific Refuges**

Individual refuge headquarters retain information regarding public use programs and conditions that apply to their specific programs and maps of their respective areas. If the specific refuge you are interested in is not mentioned below, then contact the appropriate regional offices listed below:

Region 1—Hawaii, Idaho, Oregon, and Washington. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Eastside Federal Complex, Suite 1692, 911 N.E. 11th Avenue, Portland, OR 97232–4181; Telephone (503) 231–6214.

Region 2—Arizona, New Mexico, Oklahoma, and Texas. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Box 1306, 500 Gold Avenue, Albuquerque, NM 87103; Telephone (505) 248–7419.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1 Federal Drive, Federal Building, Fort Snelling, Twin Cities, MN 55111; Telephone (612) 713–5401. Hamden Slough National Wildlife Refuge, 21212 210th Street, Audubon, Minnesota 56511; Telephone (218) 439–6319.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, South Carolina, Puerto Rico, and the Virgin Islands. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, GA 30345; Telephone (404) 679–7166.

Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 300 Westgate Center

Drive, Hadley, MA 01035–9589; Telephone (413) 253–8306.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 134 Union Blvd., Lakewood, CO 80228; Telephone (303) 236–8145.

Region 7—Alaska. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, AK 99503; Telephone (907) 786–3545.

Region 8—California and Nevada. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W 2606, Sacramento, CA 95825–1846; Telephone (916) 414–6464.

**Primary Author**

Leslie A. Marler, Management Analyst, Division of Conservation Planning and Policy, National Wildlife Refuge System, is the primary author of this rulemaking document.

**List of Subjects in 50 CFR Part 32**

Fishing, Hunting, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

■ For the reasons set forth in the preamble, we amend title 50, Chapter I, subchapter C of the Code of Federal Regulations as follows:

## PART 32—[AMENDED]

■ 1. The authority citation for part 32 continues to read as follows:

**Authority:** 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd–668ee, and 715i.

■ 2. Amend § 32.7 ''What refuge units are open to hunting and/or sport fishing?'' by:

■ a. Adding Hamden Slough National Wildlife Refuge, in alphabetical order, in the State of Minnesota; and

■ b. Removing Stillwater Management Area in the State of Nevada.

■ 3. Amend § 32.37 Louisiana by:

■ a. Revising paragraphs A.3., A.5., A.6., A.9., A.11., A.12, B.2., B.6., B.7., adding paragraphs B.8. through B.10., and revising paragraph C. of Tensas River National Wildlife Refuge; and

■ b. Revising paragraphs A., B., and C. of Upper Ouachita National Wildlife Refuge to read as follows:

### § 32.37 Louisiana.

* * * * *

**Tensas River National Wildlife Refuge**

A. Migratory Game Bird Hunting.

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3. We allow refuge hunters to enter the refuge no earlier than 4 a.m., and they must depart no later than 2 hours after legal sunset unless they are participating in the refuge raccoon hunt.

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5. We allow shotguns equipped with a single-piece magazine plug that allows the gun to hold no more than two shells in the magazine and one in the chamber. We prohibit target practicing or shooting to unload modern firearms on the refuge at any time. Shotgun hunters must possess only an approved nontoxic shot when hunting migratory birds (see § 32.2(k)). We require hunters to unload and encase all guns transported in automobiles and boats or on all-terrain vehicles (see § 27.42(b) of this chapter). We allow firearms on the refuge only during the refuge hunting season.

6. We prohibit permanent or pit blinds on the refuge. You must remove all blind material sand decoys following each day's hunt (see § 27.93 of this chapter).

* * * * *

9. We prohibit baiting or the possession of bait at any time while on the refuge (see § 32.2(h)).

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11. While visiting the refuge, we prohibit: spotlighting, littering, fires, trapping, mandrives for game, possession of alcoholic beverages in hunting areas, possession of open alcoholic beverage containers, flagging, engineers tape, paint, unleashed pets, and parking/blocking trail and gate entrances. We prohibit hunting within 150 feet (45 m) of: a designated public road, maintained road (a road or trail which has been mowed, disked, or plowed), trail, fire breaks, dwellings, and above-ground oil and gas production facilities.

12. We require a Tensas River National Wildlife Refuge Access Permit for all migratory bird hunts. You will find the permits on the front of the Public Use Regulation brochure.

* * * * *

B. Upland Game Hunting. * * *

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2. We allow squirrel and rabbit hunting with and without dogs. We will allow hunting without dogs from the beginning of the State season to a date typically ending the day before the refuge deer muzzleloader hunt. We do not require hunters to wear hunter orange during the squirrel and rabbit hunt without dogs. Squirrel and rabbit hunting will begin again, with or without dogs, the day after the refuge deer muzzleloader hunt and will conclude the last day of the refuge squirrel season which typically ends on February 15.

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6. We allow .22 caliber rimfire weapons and shotguns equipped with a single-piece magazine plug that allows the gun to hold no more than two shells in the magazine and one in the chamber. We prohibit target practicing or shooting to unload modern firearms on the refuge at any time. Shotgun hunters must possess only an approved nontoxic shot when hunting upland game (see § 32.2(k)). We require hunters to unload and encase all guns transported in automobiles and boats or on all-terrain vehicles (see § 27.42(b) of this chapter). We define loaded as shells in gun or caps on muzzleloader. We allow firearms on the refuge only during the refuge hunting season.

7. We require all upland game hunters to report their game immediately after each hunt at the check station nearest the point of take.

8. Conditions A7, A10, A11, and A13 apply.

9. We prohibit any hunter from using climbing spikes or to hunt from a tree that contains screw-in steps, nails, screw-in umbrellas, or any metal objects that could damage trees (see § 32.2(i)).

10. We require a Tensas River National Wildlife Refuge Access Permit for all upland game hunts. Hunters will find permits on the front of the Public Use Regulations brochure.

*C. Big Game Hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge subject to the following conditions:

1. Deer archery season will begin the first Saturday in November and will conclude on the last day of the State archery season which is generally January 31. We require that archery hunters, including crossbow hunters, possess proof of completion of the International Bowhunters Safety course. We prohibit archery hunting during the following refuge-wide deer hunts: youth gun hunt and modern firearms hunts. We prohibit possession of pods, drug-tipped arrows, or other chemical substances.

2. Deer muzzleloader season will be 3 days and occur on a Monday, Tuesday, and Wednesday in January. We will allow in-line muzzleloaders and magnified scopes.

3. We will conduct two 2-day quota modern firearms hunts for deer typically in the month of December. Hunt dates and permit application procedures will be available at Refuge Headquarters in July. We restrict hunters using a muzzleloader during this hunt to areas where we allow modern firearms.

4. We will conduct guided quota youth deer hunts and guided quota physically challenged deer hunts in the Greenlea Bend area typically in December and January. Hunt dates and permit application procedures will be available at the Refuge Headquarters in July.

5. We will conduct a refuge-wide youth deer hunt during the State-wide youth hunt weekend typically in November. Hunt dates will be available at Refuge Headquarters in July. Each adult hunter may supervise only one youth. Each participating youth must: be age 8–15, possess proof of completion of an approved Hunter Safety Course, and be accompanied at all times by an adult age 21 or older.

6. Hunters may take only one deer (one buck or one doe) per day during refuge deer hunts except during guided youth and physically challenged hunts where the limit will be one antlerless and one antlered deer per day.

7. We allow turkey hunting the first 16 days of the State turkey season. We will conduct a youth turkey hunt the Saturday and Sunday before the regular State turkey season. You may harvest two bearded turkeys per season. We allow the use and possession of lead shot while turkey hunting on the refuge (see § 32.2(k)). We allow use of nonmotorized bicycles on designated all-terrain vehicle trails. Although you may hunt turkeys without displaying a solid hunter orange cap or vest during your turkey hunt, we do recommend its use.

8. Conditions A3, A7, A9, A11, A13, and B9 apply.

9. In areas posted ''Closed Area,'' we prohibit big game hunting at any time. ''Closed Area''(s), which we designate on the Public Use Regulations brochure map, are closed to all hunts.

10. We allow shotguns that are equipped with a single-piece magazine plug that allows the gun to hold no more than two shells in the magazine and one in the chamber. We allow shotgun hunters to use rifled slugs only when hunting deer. We prohibit hunters using or possessing buckshot while on the refuge. We prohibit target practicing or shooting to unload modern firearms on the refuge at any time. We require hunters to unload and encase all guns transported in automobiles and boats or on all-terrain vehicles (see § 27.42(b) of this chapter). We define loaded as shells in gun or caps on muzzleloader. We allow firearms on the refuge only during the refuge hunting season.

11. We allow muzzleloader hunters to discharge their muzzleloaders at the end of each hunt safely into the ground at least 150 feet (45 m) from any designated public road, maintained road, trail, fire breaks, dwellings, or above-ground oil and gas production facilities. We define a maintained road or trail as one which has been mowed, disked, or plowed and one which is free of trees.

12. We prohibit deer hunters leaving deer stands unattended before the opening day of the refuge archery season, and hunters must remove stands by the end of the last day of the refuge archery season. Hunters must clearly mark stands left unattended on the refuge with the name and address of the owner of the stand. Hunters must remove portable stands from trees daily and place freestanding stands in a nonhunting position when unattended.

13. We require deer hunters using muzzleloaders or modern firearms to display a solid hunter-orange cap on their head and a solid hunter-orange vest over their outermost garment covering their chest and back. Hunters must display the solid hunter-orange items at all times while in the field.

14. We require muzzleloader and modern firearms hunters utilizing ground blinds to display 400 square inches (2,600 $cm^2$) of hunter orange outside of the blind that is visible from all sides of the blind. Hunters must wear orange vests and hats as their outermost garments while inside the blind.

15. We require all deer and turkey hunters to report their game immediately after each hunt at the check station nearest to the point of take.

16. We prohibit baiting or the possession of bait while on the refuge at any time. We prohibit possession of chemical baits or attractants used as bait.

17. We require a Tensas River National Wildlife Refuge Access Permit for all big game hunts. You will find the permits on the front of the Public Use Regulations brochure.

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**Upper Ouachita National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of waterfowl (duck, goose, coot, gallinule, rail, snipe), woodcock, and dove on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Hunters must possess and carry a signed refuge permit.

2. We allow waterfowl hunting on the west side of the Ouachita River north of RCW Road. We allow waterfowl hunting on the east side of the Ouachita River outside the Mollicy levee and south of the crude oil pipeline which runs through Township 22N range 4E sections 2, 3, 4 within the levee.

3. We allow woodcock hunting west of the Ouachita River. We allow woodcock hunting on the east side of the Ouachita River outside the Mollicy levee and south of the crude oil pipeline which runs through Township 22N range 4E sections 2, 3, 4 within the levee.

4. We allow dove hunting during the first 3 days of the State season east of the Ouachita River outside the Mollicy levee and south of the crude oil pipeline which runs through Township 22N range 4E sections 2, 3, 4 within the levee.

5. We allow waterfowl hunting until 12 p.m. (noon) during the State season.

6. We will hold a limited youth waterfowl lottery hunt during the State Youth Waterfowl Hunt. Application instructions are available at the refuge office.

7. Hunters may enter the refuge no earlier than 4 a.m.

8. We prohibit hunting within 100 feet (30 m) of the maintained rights of ways of roads, from or across ATV trails, and from above-ground oil, gas, or electrical transmission facilities.

9. We prohibit leaving boats, blinds, and decoys unattended.

10. We allow dogs to locate, point, and retrieve when hunting for migratory game birds. We prohibit the use of dogs for hog hunting.

11. Youth hunters under age 16 must successfully complete a State-approved hunter education course. While hunting, each youth must possess and carry a card or certificate of completion. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. Each adult may supervise no more than two youth hunters.

12. We prohibit any person or group to act as a hunting guide, outfitter, or in any other capacity that pay other individual(s), pays or promises to pay directly or indirectly for service rendered to any other person or persons hunting on the refuge, regardless of whether such payment is for guiding, outfitting, lodging, or club membership.

*B. Upland Game Hunting.* We allow hunting of quail, squirrel, rabbit, raccoon, beaver, coyote, and opossum on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A8, A9, A11, and A12 (to hunt upland game) apply.

2. We allow hunting west of the Ouachita River. We allow hunting on the east side of the Ouachita River outside the Mollicy levee and south of the crude oil pipeline which runs

through Township 22N range 4E sections 2,3,4 within the levee.

3. We prohibit possession of firearms larger than .22 caliber rimfire, shotgun slugs, and buckshot.

4. We allow hunting of raccoon and opossum during the daylight hours (legal sunrise to legal sunset) of rabbit and squirrel season. We allow night hunting (legal sunset to legal sunrise) during December and January, and we allow use of dogs for night hunting. We prohibit the selling of raccoon and opossum taken on the refuge for human consumption.

5. We allow the use of dogs to hunt squirrel and rabbit after the last refuge Gun Deer Hunt.

6. To use horses and mules to hunt raccoon and opossum at night, hunters must first obtain a special permit at the refuge office.

7. Hunters may enter the refuge no earlier than 4 a.m. and must exit no later than 2 hours after legal shooting hours.

8. We allow hunting of beaver and coyote during all open refuge hunts with weapons legal for the ongoing hunt.

*C. Big Game Hunting.* We allow hunting of white-tailed deer, feral hog, and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A8, A9, A12 (to hunt big game), and B7 apply.

2. We allow general gun deer hunting on the following days: the first consecutive Saturday and Sunday of November; the Friday, Saturday, and Sunday following Thanksgiving Day; and the second Saturday and Sunday after Thanksgiving Day. We allow archery deer hunting during the entire State season.

3. We allow deer and feral hog hunting west of the Ouachita River. We allow deer hunting on the east side of the Ouachita River outside the Mollicy levee and south of the crude oil pipeline which runs through Township 22N range 4E sections 2, 3, 4 within the levee.

4. The daily bag limit is one either-sex deer. The State season limit applies.

5. Archery hunters must possess and carry proof of completion of the International Bowhunters' Education Program.

6. We prohibit leaving deer stands, blinds, and other equipment unattended.

7. Deer hunters must wear hunter orange as per State deer hunting regulations on Wildlife Management Areas.

8. We prohibit hunters placing stands or hunting from stands on pine trees with white-painted bands/rings.

9. Youth hunters under age 16 must successfully complete a State-approved hunter education course. While hunting, each youth must possess and carry a card or certificate of completion. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. Each adult may supervise no more than one youth hunter.

10. We will hold a limited lottery youth turkey hunt on the Saturday of the State youth turkey hunt weekend.

11. We prohibit possession or distribution of bait or hunting with the aid of bait, including any grain, salt, minerals, or other feed or nonnaturally occurring attractant on the refuge (see § 32.2(h)).

12. We allow hunting of hog during all open refuge hunts with weapons legal for the ongoing hunt.

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■ 4. Amend § 32.39 Maryland by revising paragraphs A. and B. of Blackwater National Wildlife Refuge to read as follows:

**§ 32.39 Maryland.**

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**Blackwater National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose and duck on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require refuge permits for all hunters regardless of age. We require that hunters possess a valid State hunting license, any required stamps, and a photo identification. Permits are nontransferable.

2. All refuge hunters must abide by the terms and conditions of the refuge permit.

B. *Upland Game Hunting.* We allow hunting of eastern wild turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions: Conditions A1 and A2 apply.

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■ 5. Amend § 32.42 Minnesota by:

■ a. Revising Agassiz National Wildlife Refuge; and

■ b. Adding Hamden Slough National Wildlife Refuge to read as follows:

**§ 32.42 Minnesota.**

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**Agassiz National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of waterfowl on the Farmers Pool Unit area of the refuge in accordance with State regulations subject to the following conditions:

1. We allow a youth hunt only (age 16 and under). Youth hunters age 14 and under must be accompanied by an adult age 18 or older.

2. We prohibit vehicles and hunters from entering the refuge before 5:30 a.m. They must leave the refuge each day as soon as possible after legal hunting hours.

3. We prohibit the use of motorized boats.

4. We prohibit the construction or use of permanent blinds, stands, or scaffolds (see § 27.92 of this chapter).

5. You must remove all personal property, which includes boats, decoys, and blinds brought onto the refuge, each day of hunting (see §§ 27.93 and 27.94 of this chapter).

6. We allow the use of hunting dogs, provided the dog is under the immediate control of the hunter at all times.

7. We prohibit the use of snowmobiles and ATVs.

8. We prohibit camping.

*B. Upland Game Hunting.* We allow hunting of ruffed grouse and sharp-tailed grouse on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunting from the opening of the State's deer firearms season to the close of the regular State's ruffed grouse and sharp-tailed grouse seasons.

2. You may possess only approved nontoxic shot while in the field (see § 32.2(k)).

3. We prohibit hunting in the closed areas around the administrative buildings.

4. Conditions A2 through A8 apply.

*C. Big Game Hunting.* We allow hunting of white-tailed deer and moose on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We are currently closed to moose hunting until the population recovers.

2. Conditions A1, A3, A4, A5, A7, and A8 apply.

3. We allow scouting the day before the youth deer hunt and the deer firearms hunt.

4. We open archery hunting at the start of the State's deer firearms season and close according to the State's archery deer season.

5. We allow muzzleloader deer hunting following the State's muzzleloader season.

6. Hunters may use portable stands. We prohibit construction or use of permanent blinds, permanent platforms, or permanent ladders.

7. You must remove all stands and personal property from the refuge by

legal sunset of each day (see §§ 27.93 and 27.94 of this chapter).

8. We prohibit hunters from occupying illegally set up or constructed ground and tree stands (see condition C2).

9. We allow the use of wheeled, nonmotorized conveyance devices (*e.g.*, bikes, retrieval carts) except in Wilderness Areas.

10. We prohibit vehicles and hunters from entering the refuge during the youth deer hunt until after 6 a.m.

*D. Sport Fishing.* [Reserved]

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**Hamden Slough National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of waterfowl on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow waterfowl hunting during the State's Youth Waterfowl Day.

2. Youth waterfowl hunters must be age 15 and under.

3. We will only allow waterfowl hunting in refuge tracts within Audubon and Riceville Townships.

4. We prohibit the use of motorized boats.

5. We prohibit the construction or use of permanent blinds, stands, or scaffolds.

6. You must remove all personal property, which includes boats, decoys, blinds, and blind materials (except for blinds made entirely of marsh vegetation) brought onto the refuge, following that day's hunt (see §§ 27.93 and 27.94 of this chapter).

7. We allow the use of hunting dogs, provided the dog is under the immediate control of the hunter at all times during the State-approved hunting season.

8. We prohibit entry to hunting areas earlier than 2 hours before legal shooting hours.

*B. Upland Game Hunting.* [Reserved]

*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow hunting during the State's muzzleloader season with muzzleloaders.

2. Hunters may use portable stands. We prohibit construction or use of permanent blinds, permanent platforms, or permanent ladders.

3. Hunters must remove all stands and personal property from the refuge at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

4. Condition A8 applies.

*D. Sport Fishing.* [Reserved]

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■ 6. Amend § 32.69 Wisconsin by revising paragraph C. of Whittlesey Creek National Wildlife Refuge to read as follows:

**§ 32.69 Wisconsin.**

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**Whittlesey Creek National Wildlife Refuge**

* * * * *

*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We will allow archery deer hunting to take place on refuge lands owned by the Service that constitute tracts greater than 20 acres (8 ha).

2. We prohibit hunting within a designated, signed area around the Coaster Classroom and Northern Great Lakes Visitor Center boardwalk.

3. We prohibit the construction or use of permanent blinds or platforms.

4. Hunters may use ground blinds or any elevated stands only if they do not damage live vegetation, including trees (see § 27.61 of this chapter).

5. Hunters may construct ground blinds entirely of dead vegetation from the refuge lands.

6. Hunters must remove all stands and blinds from the refuge at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

7. We allow motorized vehicles only on public roads and parking areas (see § 27.31 of this chapter).

* * * * *

Dated: August 8, 2008.

**David M. Verhey,**

*(Acting) Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. E8–20022 Filed 8–28–08; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Friday,
August 29, 2008

# Part V

# Federal Trade Commission

## 16 CFR Part 310

## Telemarketing Sales Rule (“TSR”); Final Rule Amendments

**FEDERAL TRADE COMMISSION**

**16 CFR Part 310**

**RIN: 3084–AA98**

## Telemarketing Sales Rule (''TSR'')

**AGENCY:** Federal Trade Commission

**ACTION:** Final Rule Amendments

**SUMMARY:** The Commission adopts two final amendments to the TSR. The first is an amendment making explicit a prohibition in the TSR on telemarketing calls that deliver prerecorded messages without a consumer's express written agreement to receive such calls. This amendment also requires that all prerecorded telemarketing calls provide specified opt-out mechanisms so that consumers can opt out of future calls. The amendment is necessary because the reasonable consumer would consider prerecorded telemarketing messages to be coercive or abusive of such consumer's right to privacy.

The second amendment modifies the method for measuring the maximum call abandonment rate prescribed by the TSR's call abandonment safe harbor. The new method will permit sellers and telemarketers to calculate call abandonment rates for a live calling campaign over a thirty-day period, or any part thereof. This amendment is necessary because the current ''per day'' standard effectively precludes the use of predictive dialers with small calling lists.

**DATES:** The amendments are effective October 1, 2008. Compliance with 16 CFR 310.4(b)(4)(i) is required beginning October 1, 2008. Compliance with 16 CFR 310.4(b)(1)(v) is required beginning December 1, 2008, except that compliance with 16 CFR 310.4(b)(1)(v)(A) is not required until September 1, 2009.

**ADDRESSES:** Requests for copies of these amendments to the TSR and this Statement of Basis and Purpose (''SBP'') should be sent to: Public Reference Branch, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580. The complete record of this proceeding is also available at that address. Relevant portions of the proceeding, including the final amendments to the TSR and SBP, are available at *www.ftc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Craig Tregillus, (202) 326–2970, Division of Marketing Practices, Room 286, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580.

**SUPPLEMENTARY INFORMATION:**

### I. Overview and Background

*A. Overview*

This document states the basis and purpose for the Commission's decision to adopt two proposed amendments to the TSR[1] that were published for public comment on October 4, 2006.[2] After careful review and consideration of the entire record of more than 14,000 comments amassed on the issues presented in this rulemaking proceeding, the Commission has decided to adopt, with several modifications suggested by the public comments, an amendment making explicit a prohibition on prerecorded telemarketing calls without a consumer's express written agreement to receive such calls. The prerecorded call amendment will take effect in two stages. The requirement that prerecorded calls provide an automated interactive keypress or voice-activated opt-out mechanism will take effect on December 1, 2008, but the prohibition on placing calls that deliver prerecorded messages without the prior express written agreement of the recipient to receive such calls will not take effect until September 1, 2009.

In adopting the amendment explicitly prohibiting prerecorded calls delivered to consumers who have not agreed to receive them, the Commission has modified the proposed amendment in several respects as suggested by the public comments. The most significant revisions will: (1) Require sellers and telemarketers to provide a keypress or voice-activated opt-out mechanism promptly at the outset of any prerecorded message call that could be answered by a consumer as of December 1, 2008; (2) Make the amendment applicable to prerecorded messages left on answering machines and voicemail services, requiring that any prerecorded message call that could be answered by such a device promptly disclose at the outset a toll-free number that a consumer may use to assert a request not to receive such calls; and (3) Permit sellers to obtain the consumer's signed, written agreement to receive calls delivering prerecorded messages in any manner permitted by the Electronic Signatures In Global and National Commerce Act (''E–SIGN Act'' or ''E–SIGN'').[3]

Beginning on December 1, 2008, sellers and telemarketers will be required to comply with the new requirement to include an automated interactive opt-out mechanism pursuant to Section 310.4(b)(1)(v)(B). This requirement applies to calls delivering prerecorded messages, whether answered by the recipient in person, or answered by an answering machine or voicemail service.

In addition, as of December 1, 2008, the Commission will terminate its previously announced policy of forbearing from bringing enforcement actions against sellers and telemarketers who, in accordance with a safe harbor that was proposed in November 2004, make calls that deliver prerecorded messages to consumers with whom the seller has an established business relationship (''EBR''). Nevertheless, the Commission has determined that sellers and telemarketers may continue to place calls that deliver prerecorded messages to consumers with whom they have an EBR, provided they do so in compliance with the new requirement in § 310.4(b)(1)(v)(B), that prerecorded message calls include an automated interactive keypress or voice-activated opt-out mechanism. As of September 1, 2009, calls that deliver prerecorded messages will no longer be permitted to be placed based solely on the existence of an EBR, and calls that deliver prerecorded messages will be permitted to be placed only to consumers who have given their prior express written agreement to receive such calls.

The Commission also has decided to adopt two exemptions from the requirements of the prerecorded call amendment that commenters strongly advocated. First, all healthcare-related calls subject to the Health Insurance Portability and Accountability Act of 1996 (''HIPAA'')[4] will be exempt from all of the requirements of the amendment. Second, charitable fundraising calls made by for-profit telemarketers to members of, or previous donors to, a non-profit charitable organization on whose behalf the calls are placed will be exempt from the requirement to obtain prior consent, but will be required to provide an automated keypress or voice-activated opt-out mechanism and prohibited from calling consumers who use the mechanism to opt out.

In addition, the Commission is adopting, without modification, an amendment proposed in response to a petition from the Direct Marketing Association (''DMA'') to change the method for measuring the maximum call abandonment rate prescribed by the TSR's call abandonment safe harbor. The new method will permit sellers and

[1] 16 CFR 310.

[2] 71 FR 58716 (Oct. 4, 2006).

[3] Pub. L. No. 106–229, 114 Stat. 464 (2000) (*codified at* 15 USC 7001 *et seq.*).

[4] Pub. L. No. 104–191, 110 Stat. 1936 (1996) (*codified, as amended,* at 42 USC 1320 *et seq.*).

telemarketers to calculate call abandonment rates for a calling campaign over a thirty-day period, or any part thereof. This amendment will take effect on October 1, 2008.

*B. Background*

The issues under consideration in this proceeding arise under the ''call abandonment'' provisions of the TSR. These issues were first presented by two industry petitions. The first was a request from Voice-Mail Broadcasting Corporation (''VMBC'')[5] for modification of the amended TSR's ''call abandonment'' provisions to allow telemarketing calls that deliver prerecorded messages to consumers with whom the seller has an EBR if they allow consumers to opt out and meet certain other requirements.[6] The second, also involving the TSR's call abandonment provisions, was a petition from the DMA for modification of the method for calculating the maximum call abandonment rate permitted under the TSR.

On November 17, 2004, the Commission published a Notice of Proposed Rulemaking (''NPRM'') to amend the TSR to create the safe harbor requested by VMBC, and sought public comment on that proposal and the DMA petition.[7] The notice also announced that the Commission would forebear from bringing enforcement actions against sellers and telemarketers using EBR-based prerecorded telemarketing messages that comply with the proposed safe harbor during the pendency of the rulemaking proceeding.

Section 310.4(b)(1)(iv) of the TSR prohibits telemarketers from abandoning calls. An outbound telemarketing call is ''abandoned'' if the telemarketer does not connect the call to a sales representative within two seconds of the completed greeting of the person who answers. Call abandonment is an unavoidable consequence of the use of ''predictive dialers''—telemarketing equipment that increases the productivity of telemarketers by placing multiple calls for each available sales representative. Predictive dialers maximize the amount of time representatives spend speaking with consumers and minimize the time they spend waiting to speak with a prospective customer. An inevitable side effect of this functionality, however, is that the dialer will sometimes reach more consumers than can be connected to available sales representatives. In these situations, the dialer either disconnects the call (resulting in a ''hang-up'' call) or keeps the consumer connected with no one on the other end of the line in case a sales representative becomes available (resulting in ''dead air''). The call abandonment prohibition, added to the TSR pursuant to the Telemarketing and Consumer Fraud and Abuse Prevention Act (''Telemarketing Act''),[8] is designed to remedy these abusive practices.[9]

Notwithstanding the prohibition on call abandonment, § 310.4(b)(4) of the TSR contains a safe harbor designed to preserve telemarketers' ability to use predictive dialers, subject to four conditions. The safe harbor is available if the telemarketer or seller: (1) Abandons no more than three percent of all calls answered by a person (as opposed to an answering machine); (2) Allows the telephone to ring for fifteen seconds or four rings; (3) Plays a prerecorded message stating the name and telephone number of the seller on whose behalf the call was placed whenever a sales representative is unavailable within two seconds of the completed greeting of the person answering the call; and (4) Maintains records documenting compliance.[10] Because consumers who receive a prerecorded message would never be connected to a sales representative, a telemarketing campaign that consists solely of prerecorded messages would violate § 310.4(b)(1)(iv) and would not meet the safe harbor requirements in § 310.4(b)(4).

In a **Federal Register** notice published on October 4, 2006, the Commission reviewed and analyzed the nearly 13,600 comments submitted in response to the NPRM. Based on that review, the Commission: (1) Denied the VMBC request for creation of a safe harbor for prerecorded telemarketing calls; (2) Proposed an amendment to the TSR to make explicit the prohibition on prerecorded telemarketing calls that is implicit in the TSR's call abandonment provisions; and (3) Proposed an additional amendment modifying the method for measuring the maximum allowable call abandonment rate prescribed by the TSR's call abandonment safe harbor. The notice set forth the text of the proposed amendments and posed a series of questions on which the Commission sought public comment during a 30-day comment period, which the Commission subsequently extended an additional 40 days in response to a DMA petition seeking additional time, until December 18, 2006.[11] More than 600 additional comments were submitted during the comment period.[12]

In view of the denial of the proposed amendment to create a safe harbor for EBR-based prerecorded telemarketing calls, the notice also announced that the Commission would terminate its policy of forbearing from bringing enforcement actions against sellers and telemarketers using prerecorded telemarketing calls (''forbearance policy'') effective January 2, 2007. In response to four petitions seeking an extension of the forbearance policy, however, the Commission announced in a **Federal Register** notice published on December 27, 2006, that in order to preserve the *status quo*, it would extend its forbearance policy at least until the conclusion of the rulemaking proceeding.[13]

## II. The Proposed Amendment Regarding Calls That Deliver a Prerecorded Message

The Commission has decided to adopt the proposed amendment with modifications suggested by commenters. As proposed, the final amendment will permit prerecorded message calls by or on behalf of a seller only to a consumer who has signed an express written agreement authorizing the seller to place such calls to his or her designated telephone number. However, the amendments will permit a seller to obtain agreements from consumers by any electronic means authorized by the E–SIGN Act. Moreover, the amendment will apply not only to calls answered by a person as proposed, but also to prerecorded messages left on an answering machine or voicemail system.

[5] Starz Encore Group, The Spoken Hub, Copilevitz & Canter, and SoundBite Communications also submitted similar requests for a prerecorded call safe harbor.

[6] *See* note 49, *infra*.

[7] 69 FR 67287 (Nov. 17, 2004).

[8] 15 USC 6101 *et seq.* This and other amendments to the original TSR resulting from a rule review mandated by the Telemarketing Act, 15 USC 6108, took effect on March 31, 2003. TSR Statement of Basis and Purpose (''TSR SBP''), 68 FR 4580 (Jan. 29, 2003).

[9] TSR SBP, 68 FR at 4641—45. The Telemarketing Act directed the Commission to prescribe rules prohibiting deceptive and abusive telemarketing acts or practices, including ''a requirement that telemarketers may not undertake a pattern of unsolicited telephone calls which the reasonable consumer would consider coercive or abusive of such consumer's right to privacy.'' 15 USC 6102(a)(3)(A).

[10] 16 CFR 310.4(b)(4)(i)—(iv).

[11] 71 FR 65762 (Nov. 9, 2006).

[12] The list of comments, including links to each comment submitted, is available at: (*http://www.ftc.gov/os/comments/tsrrevisedcallabandon/index.htm.*) Although the list indicates that 630 additional comments were submitted, a few are duplicate submissions. *E.g.*, Chodelski, No. 196 and Chodelle, No. 197; Call Command, Inc., Nos. 608, 610; PolyMedica Corp., Nos. 604, 609.

[13] 71 FR 77634 (Dec. 27, 2006). Two of the petitions came from healthcare-related businesses that use prerecorded calls as permitted by regulations issued by the Department of Health and Human Services (''HHS'') pursuant to HIPAA.

The final amendment will require that any permitted call delivering a prerecorded message must: (1) Allow the consumer's telephone to ring for at least 15 seconds or 4 rings before an unanswered call is disconnected; (2) Begin the prerecorded message within 2 seconds of the completed greeting of the person called; (3) Disclose promptly at the outset of the call the means by which the person called may assert a Do Not Call request at any time during the message; (4) If the call could be answered in person, promptly make an automated interactive voice and/or keypress-activated opt-out mechanism available at all times during the message that automatically adds the telephone number called to the seller's entity-specific Do Not Call list and that thereafter immediately terminates the call; (5) If the call could be answered by an answering machine or voicemail service, promptly provide a toll-free telephone number that also allows the person called to connect directly to an automated voice and/or keypress-activated opt-out mechanism that is accessible at any time after receipt of the message; and (6) Comply with all other requirements of the TSR and applicable federal and state laws.

In order to reduce initial compliance costs and burdens, the Commission will defer the effective date of the requirement that prerecorded calls provide an automated interactive opt-out mechanism for three months, and the express written agreement requirement for twelve months, to ensure that the industry will have adequate time to prepare to comply. This will permit sellers and telemarketers to continue placing prerecorded calls to consumers with whom the seller has an EBR until the written agreement requirement takes effect.

In addition, healthcare-related calls subject to HIPAA will be exempt from the amendment, and calls placed by for-profit telemarketers on behalf of non-profit entities will be exempt from the written agreement requirement of the amendment but subject to the opt-out requirements.

The Commission's decision to adopt the proposed amendment is based on a careful review, consideration, and analysis of the entire record,[14] including the alternatives proposed by the public comments and the supporting evidence submitted, as well as the Commission's law enforcement experience.[15]

*A. Comments Supporting the Proposed Amendment*

More than 13,000 consumer comments previously submitted in this proceeding opposed the creation of a safe harbor for prerecorded telemarketing calls.[16] In response to the current proposal to prohibit such calls except those where a consumer has given his or her express written agreement to receive such calls, the Commission received comments from 9 consumer organizations, a state attorney general, and some 220 consumers endorsing the proposed amendment.[17] Four clear themes emerge from these comments: (1) Sellers' self interest in retaining established customers is not enough to prevent abuse through excessive pre-recorded message telemarketing; (2) Prerecorded message calls are coercive and abusive invasions of consumer privacy; (3) Prerecorded messages impose costs and burdens on consumers; and (4) Opt-out approaches may not adequately protect consumers.

1. Companies' Reputational Interest Alone Does Not Prevent Abuses From Excessive Prerecorded Message Telemarketing

Citing their personal experience, a number of the consumers who support the proposed amendment place little faith in industry assurances ''that they will self regulate and not abuse their customers.''[18] One commenter reports receiving ''one particular pre-recorded satellite TV message EVERY day, and usually several,'' from a well-established provider.[19] A second reports receiving prerecorded calls ''every 10 days or so . . . for many months'' from a major credit card service business.[20] A third is ''deluged with pre-recorded calls, urging me to subscribe to cable, satellite, mortgage terms, credit card offers and other services.''[21]

In light of this type of experience on the part of individual consumers, consumer advocates do ''not accept the argument that companies will not abuse the EBRs that they have with consumers,'' contending that there is ''no guarantee of self-restraint and every

[14] The record includes not only the comments submitted in response to the Commission's request for public comment issued on October 4, 2006, 71 FR at 58716, 58732–33, but also the comments submitted in response to the Commission's prior proposal to create a safe harbor for prerecorded calls, which raised essentially the same issues. 69 FR 67287 (Nov. 17, 2004).

[15] *E.g., FTC v. Voice-Mail Broad. Corp.*, No. 2:08-cv-00521 (C.D. Cal. Feb. 8, 2008) ($3 million civil penalty, with all but $180,000 suspended due to inability to pay, for abandoning over 46 million calls, 11 million of which were directed to numbers on the Do Not Call Registry, and providing no opt-out option to consumers who answered); *United States v. Star Satellite, Inc.*, No. 2:08–00797 (D. Nev. June 19, 2008) ($4 million civil penalty, with all but $75,000 suspended due to inability to pay, for 80 million abandoned calls from prerecorded message blasting); *United States v. Guardian Commc'n., Inc.*, No. 4:07–04070 (C.D. Ill. Nov. 15, 2007) ($7.8 million civil penalty, with all but $150,000 suspended due to inability to pay, for automated prerecorded message blasting to up to 20 million numbers a day, many of which were placed to numbers on the Registry without an EBR, for abandoning calls answered by a person, and for failure to transmit Caller ID information); *United States v. Craftmatic Indus., Inc.*, No. 07–4652 (E.D. Pa. Nov. 8, 2007) ($4.4 million civil penalty for hundreds of thousands of calls to numbers on the Registry, for abandoning millions of calls by failing to connect to a live operator, and for repeat calls to consumers who asked to be placed on the entity-specific Do Not Call list); *United States v. Broad. Team, Inc.*, No. 6:05–1920 (M.D. Fla. Feb. 2, 2007) ($2.8 million civil penalty, with $1.8 million suspended due to inability to pay, for over 64 million abandoned calls, and 1 million calls to numbers on the Registry); *United States v. Global Mort. Funding, Inc.*, No. 07–1275 (C.D. Cal. filed Oct. 30, 2007) (complaint alleging hundreds of thousands of calls to numbers on the Registry without an EBR, failing to transmit required Caller ID information, and abandoning calls by failing to connect to a sales agent); *United States v. FMFG, Inc.*, No. 3:05–00711 (D. Nev. May 23, 2007) ($900,000 civil penalty for abandoned calls and calls to numbers on the Registry); *United States v. Conversion Mktn'g., Inc.*, No. 8:06–00256 (C.D. Cal. Mar. 10, 2006) ($580,000 civil penalty for abandoned calls and calls to numbers on the Registry); *United States v. DIRECTV, Inc.*, No. 05–1211 (C.D. Cal. Dec. 14, 2005) ($5.3 million civil penalty for abandoned calls and calls to numbers on the Registry); *United States v. Braglia Mktg. Group*, No. 04–1209 (D. Nev. Mar. 1, 2005)/*United States v. Flagship Resort Dev. Corp.*, No. 1:2005–981 (D.N.J. Feb. 22, 2005) ($1.26 million civil penalty for calls to hundreds of thousands of consumers without an EBR, and abandoned calls). *See also* 71 FR at 58724 n.90.

[16] These comments can be found at (*http://www.ftc.gov/os/comments/tsrcallabandon.*) *See* 71 FR at 58718 n.23.

[17] Attorney General of the State of Connecticut (''CTAG''), No. 585, at 2; Privacy Rights Clearinghouse (''PRC''), No. 552, at 3; AARP, No. 593, at 3; National Consumers League (''NCL''), No. 529, at 1. NCL states that its comment is filed on its own behalf and on that of the following consumer advocacy groups: Consumer Action, Consumer Federal of America, the Electronic Privacy Information Center, Junkbusters, Private Citizen, Inc., and the Privacy Rights Clearinghouse. NCL at 1. An additional 101 consumer comments appear to support the proposed amendment, but do not specifically refer to ''prerecorded'' calls.

[18] Barker, No. 633, at 2; *see* Lardner no. 168 (''I am on both the national and state Do Not Call lists and STILL get these obnoxious robo calls all the time.''); Gradwohl, No. 227 (''The pre-recorded, computer generated methods being used by telemarketers presently, has had the effect of making the [Do Not Call] list meaningless'').

[19] Perrone, No. 555 (emphasis in original).

[20] Corgard, No. 596.

[21] Williams, No. 376; *cf.* Miller, No. 528 (''We are elderly, handicapped, solvent and rational. We don't need storm windows, [satellite TV], refinancing, lower interest rates, 'free' trips to golf resorts—or hangup calls invading our privacy 24–7''). *See also*, Wall, No. 377 (receives the same prerecorded message from a large loan company that ''repeats, repeats and repeats, month after month . . . that states I am approved for a loan that I don't want and have never sought''); Matthews, No. 152 (''regularly'' receives a call asking for a renewal of a major newspaper he ordered for one month two years ago); Davies, No. 242 (gets ''3–4 calls per week'' from a Visa card issuer that has submitted a comment in this proceeding).

reason to believe that the economic incentives for using prerecorded sales calls will lead to an increase from the current level of sales calls'' because ''[n]ew entrants in the marketplace will be motivated to use this technology to reach as many consumers as possible and established companies will use it to try to retain their market share.''[22] They point out that the savings in labor costs that can be realized by substituting prerecorded calls for sales agent calls are not simply theoretical. They argue that the potential for these real savings suggests prerecorded calls likely will increase if they are permitted. As NCL put it, ''if [prerecorded message telemarketing] wasn't so attractive, the telemarketing industry would not be pressing so vigorously for its use to be sanctioned.''[23] Another advocate concludes that ''[c]onsumer comments, when combined with the Commission's record of enforcement actions, confirm that the telemarketing industry is not one that can effectively police itself.''[24] Two consumer groups therefore urge the Commission to go further than the proposed amendment does and completely ban all prerecorded calls.[25]

2. Prerecorded Calls Are Coercive and Abusive Privacy Invasions

Consumers are adamant that prerecorded calls are abusive of their privacy. A typical expression of this view is that, ''I consider myself to be a 'reasonable' consumer and I do consider prerecorded telemarketing sales calls abusive to my privacy rights.''[26] A number of comments object that prerecorded calls are uninvited and unwanted abusive invasions into the private sanctuary of consumers' homes.[27]

Other consumers find prerecorded calls not only abusive, but coercive,[28] and therefore support the proposed amendment.[29] Several consider prerecorded calls as manipulative attempts to trick them into making a purchase.[30] Others express concern that prerecorded calls confuse and mislead vulnerable populations such as the elderly and young children.[31] Consumer groups warn that there is a ''potential for large numbers of consumers to be victimized'' by coercive marketing pitches ''given the trend toward negative-option marketing and the use of preacquired account numbers,'' because prerecorded calls ''are by their very nature one-sided conversations,'' and ''if there is no opportunity for consumers to ask questions,'' offers ''may not be sufficiently clear for consumers to make informed choices'' before pressing a button or saying ''yes'' to make a purchase.[32]

Consumer groups assert that consumers find EBR-based prerecorded messages ''coercive or abusive'' of their privacy because ''[f]or years and at every opportunity, consumers have weighed in against all manner of unwanted telemarketing calls, whether from 'live' callers, prerecorded messages or [abandoned call] hang-ups.''[33] They emphasize that the record contains overwhelming evidence of consumer aversion to prerecorded message calls, citing the more than 13,000 consumer comments previously received,[34] and the number of telephones listed in the National Do Not Call Registry (now more than 150 million) as evidence of continuing public outrage over unwanted calls and consumers' desire to preserve their privacy.[35]

Two of the consumer group comments also stress that the value to consumers of prerecorded sales calls is ''minimal'' or ''negligible'' compared to the harm such calls inflict on their privacy.[36] While acknowledging that some consumers ''might find it easier to hang up on recorded sales calls than live ones,'' NCL points out that ''they would still have to answer when their phones ring, and it is likely that they would be running to answer their phones much more frequently.''[37]

3. Prerecorded Messages Impose Costs and Burdens on Consumers

Comments that support the proposed amendment cite both direct and indirect costs consumers incur from the receipt of prerecorded messages—wholly apart from their loss of privacy and consumers' subsidization of such calls through payments for their telephone service. NCL notes that with ''the ubiquitous use of cell phones'' the cost to consumers of listening to unwanted prerecorded sales messages on their cell phones ''would put consumers at an economic disadvantage'' when they access their voicemail or answering machines remotely or forward landline

[22] NCL at 5–6.

[23] NCL at 2; *cf.* AARP at 4 (asserting that ''permitting prerecorded calls with prior written consent will increase the volume of telemarketing calls'').

[24] PRC at 2.

[25] *Id.* at 3; AARP at 4–5.

[26] Wong, No. 236; *see also, e.g.*, Donohue, No. 30; Calderon, No. 301; Cook, No. 320; Steans, No. 351; Whitley, No. 262; Pearson, No. 442.

[27] *E.g.*, Brick, No. 309 (''This reasonable consumer considers that *all* unsolicited calls are abusive of my right of privacy''); Macdonald, No. 232 (''Please. Stop the home invasions''); Benson, No. 516; Donohue, No. 300; Mathes, No. 449; Seabrook, No. 74; Smith, No. 174; Young, No. 330; Wibbens, No. 157; Weintraub, No. 202; Will, No. 318 (''[W]e are left with a feeling like the aftermath of rape, that we had no choice when a stranger accosted us in [our] sanctuary''). Some consumers regard prerecorded calls as a repeated harassment that is abusive. *E.g.*, Steans, No. 351; Cook, No. 320; Whitley, No. 262; Shaw, No. 399; Wall, No. 377. Several comments say that such calls are abusive because they create an inconvenient or disruptive disturbance of the peace and quiet at home. *E.g.*, Lillie, No. 269; Lilly, No. 522; Thomas, No. 386; Walsh, No. 369. Others view prerecorded calls as abusive because they are a ''waste of time,'' *e.g.*, Williams, No. 376; Sanders, No. 385; Casabona, No. 559; Weintraub, No. 202; or a nuisance. *E.g.*, Linam, No. 298; Lilly, No. 522;Wall, No. 377; *cf.* Perrone, No. 555 (''Deliver me from pre-recorded marketers'').

[28] Hui, No. 119, at 1; Abramson, No. 122 at 1.

[29] *E.g.*, Stump, No. 200. (''[T]he FTC should outlaw all prerecorded messages unless I give my written consent for such calls''); Blanchard, No. 83; Chodelski, No. 196; Haagen, No. 64; Jaujoks, No. 398; Martin, No. 25; Seabrook, No. 74.

[30] *E.g.*, Smith, No. 174 (''My experience is these [prerecorded] calls are often attempts to fool me with some type of SCAM!''); *see* Weintraub, No. 202 (prerecorded messages contain ''manipulative tacky advertising''); Mathes, No. 449 (prerecorded calls ''try to coerce me into buying something'').

[31] *E.g.*, Young, No. 330 (asserting that ''these [prerecorded] calls are especially confusing and often misleading and abusive for vulnerable populations such as the frail elderly''); Seabrook, No. 74 (concerned ''about the possibility of minor children taking telephone calls from marketing bots and being unable to assess that the call is an unsolicited attempt at marketing''); Wall, No. 377 (worried that repeated calls he receives stating he has been approved for a loan could be accepted by a child by ''simply pressing a certain number on the dial'').

[32] NCL at 4–5. NCL observes that while ''prerecorded calls today generally require the consumer to call back and speak to a live salesperson to make a transaction,'' there is nothing to prevent the use of fully automated prerecorded calls ''in the not-too-distant future.'' *See also*, Wibbens, No. 157 (''Allowing pre-recorded telemarketing calls that require the consumer to follow certain prompts in order to indicate the 'Do Not Call' status may increase the frequency of people being victimized by marketing schemes'').

[33] PRC at 2; *see* NCL at 2; AARP at 4.

[34] PRC at 2; NCL at 2.

[35] PRC at 2; NCL at 1; AARP at 2. AARP notes that 62 percent of the respondents in a 2005 survey it conducted of consumers with telephone numbers listed on the Registry said they received more telemarketing calls than they would like, whereas only 2 percent received fewer than they would like. AARP at 3, 4. AARP also reports that when asked to respond to the question, ''[o]verall, which phrase best describes telemarketing,'' a total of ''84 percent [of the respondents] said it was either '''irritating' (62%) or 'invades my privacy' (32%)'' whereas ''less than 1% of the respondents (0.4%) responded that telemarketing 'is a great way to hear about new products and services.''' AARP at 5–6.

[36] NCL at 5; AARP at 5. Neither of the other two consumer advocates suggests that prerecorded calls provide more than a minimal consumer benefit. CTAG at 2; NCL at 5.

[37] NCL at 5 (adding that ''the surge of prerecorded political messages that many of us endured during the recent election cycle is only a preview of the deluge that is likely to be unleashed if prerecorded sales calls are allowed''). Although political calls are not placed for the purpose of inducing purchases of goods or services, and therefore are not ''telemarketing'' within the meaning of the TSR, 16 CFR 310.2(cc), or the Telemarketing Act, 15 USC 6106(4), some 30 consumer comments complained about prerecorded political calls received during the 2006 election. *E.g.*, Baldwin, No. 434; Hetsko, No. 326; Pless, No. 139.

calls to their cell phones.[38] One consumer says that she often forwards calls when away from home to her cellular telephone, and ends up ''paying airtime for unwanted calls'' when she receives a prerecorded message.[39] Another notes that while traveling on business, he depends on his home message machine to record important calls, but that ''[o]n any given trip, 10% of the space is taken up by those useless [prerecorded] calls.''[40]

A number of consumers object to prerecorded and other telemarketing calls taking a ''free ride'' on the telephone service they pay for, and interfering with its intended use. They contend that they pay for a telephone to provide a ''communication device for my family, friends and work,''[41] and object to the hijacking of their telephone service to transmit unsolicited advertisements, particularly when they receive no compensation in return.[42] Several comments also suggest that prerecorded calls may be frustrating the original purpose of telephone service, and diminishing its value to consumers.[43]

Finally, several comments cite potential indirect safety costs. A police detective asserts that the fact that prerecorded calls do not disconnect ''creates a serious problem should you need immediate access to your phone for a 9–1–1 call.''[44] Similarly, a consumer reports that after he hangs up on a prerecorded message from a company that calls at least once a month, ''the recording sometimes continues, and occasionally calls me right back to finish the message.''[45]

4. Opt-out Approaches May Not Adequately Protect Consumers

In anticipation of industry arguments that prerecorded calls with automated keypress opt-out mechanisms should be allowed, AARP, NCL, and individual consumers highlight the problems of opting out from prerecorded sales calls. AARP emphasizes that under the proposed amendment, seniors and others will be harmed if they ''initially determine [prerecorded sales] calls would be of interest'' and agree to receive them, because ''if a consumer subsequently decides to change their 'opt-in' with the seller it will be confusing, and possibly difficult . . . [to retract it] without a live person to speak with.''[46] AARP also notes that it will be more difficult for consumers to ''just hang up'' when they receive prerecorded sales calls, because they first will need to determine whether the call is one they have agreed to receive.[47]

NCL argues that interactive opt-out technologies provide no guarantee that consumers will be able to halt repeated prerecorded calls that are abusive. NCL emphasizes that ''if the opt-out is automatic,'' consumers will be unable to ''ask questions about why they have received the call'' or to obtain information ''that would help them determine whether the call may have violated their rights'' so that they can report the violation for law enforcement action.[48]

Several comments from individual consumers assert that the opt-out options in the prerecorded messages they have experienced are burdensome and ineffective.[49] Consumers report problems with both live and automated opt-out mechanisms.[50] Some cite individual company policies that have prevented them from adding their number to a Do Not Call list, or that they find objectionable.[51] One comment observes that the ''deluge'' of prerecorded calls renders interactive opt-out options ineffective because it makes ''consumers impatient, and they hang up before they can hear how to get on the 'do not call' list, even if instructions on how to do so are left at the beginning of the message.''[52]

[38] NCL at 4. Although FCC regulations promulgated under the TCPA prohibit both live and prerecorded calls made to cell phones, pagers, and fax machines, where the called party will be charged for the call, 47 CFR 64.1200(a)(1)(iii), (a)(3), NCL limits its argument to situations where consumers incur costs from forwarding landline calls to a cell phone or from calling long distance while traveling to listen to messages on their home voicemail or answering machine.

[39] Farrow, No. 365; NCL at 4; *cf.* Hooper, No. 331; Khitsun, No. 546; Munoz, No. 612.

[40] Scott, No. 362. This commenter does not indicate whether he incurs long-distance charges to retrieve the prerecorded messages from his answering machine.

[41] Pohl, No. 389; *see* House, No. 424 (''I have a phone so I can keep in touch with friends and family. . . . I do not want to pay for phone service so companies can use it for their convenience in their marketing efforts''); Casabona, No. 559; Mathes, No. 449; Scott, No. 362.

[42] Walker, No. 52 (''I think folks that agree to receive telemarketing calls should be compensated for their time. That would be similar to Pay-Per-Click advertising.''); Barnes, No. 560; *see* Khitsun, No. 546 (''Who would like to buy a product from someone who calls them at their own expense?'').

[43] Snell, No. 210 (noting that merchants will be unable to contact him by telephone with important information, such as safety recalls, because prerecorded calls have ''forced me to either not give out my phone number or to provide a false number'' when making purchases); Lepeska, No. 412 (relating that her 86-year-old mother frequently does not answer her prepaid calling card calls, which identify her as an ''unknown caller,'' because her mother ''thinks it might be a sales call''); *cf.* Robertson, No. 264 (''I have family who use prepaid calling cards and so must answer calls from numbers I do not recognize, as they may be family'').

[44] Palicki, No. 260 (''Your husband goes down with a heart attack and you can't get the recording to disconnect. These are actual issues''); *see* Casabona, No. 559 (Prerecorded calls ''frequently result in one being unable to clear the line until the recording is over (you can hang up and pick up and the recording is still there)''). Two of the comments from consumer advocates also express concern that prerecorded messages may prevent access to a telephone line in an emergency. CTAG at 2; NCL at 5. The Commission has acknowledged that this ''creates legitimate cause for concern.'' 71 FR at 58723.

[45] Haddox, No. 549.

[46] AARP at 4. AARP is correct in implying that, as proposed, the amendment did not provide expressly that an agreement to receive prerecorded messages, once given, would remain subject to the company-specific opt-out requirements of the TSR, and also did not require an effective keypress opt-out mechanism for consumers who agree to receive such messages but subsequently change their mind.

[47] AARP at 5.

[48] NCL at 4; *cf.* Thomas, No. 386 (reporting that after receiving over 20 prerecorded solicitations in 30 days, she had to pay her telephone company ''over $1.50 per trace'' in order to identify the offending telemarketer). NCL also notes that keypress technology ''would obviously not work for people who still have rotary dials, and that ''if the opt-out request requires talking to a live company representative,'' there is ''no assurance that one will be readily available.'' NCL at 4.

[49] Pursuant to a non-enforcement policy announced by the Commission when it proposed the safe harbor requested by VMBC in its petition, sellers and telemarketers placing calls in compliance with the proposed safe harbor to deliver prerecorded messages to consumers with whom the seller has an EBR have not risked enforcement action. 69 FR at 67290; 71 FR at 77635 (extending the policy in response to several industry requests). Under that policy, prerecorded calls have been permitted if, among other things, a keypress opt-out mechanism or other means is provided at the outset of the call for consumers to add their telephone number to the seller's company-specific Do Not Call list.

[50] Lardner, No. 168 (''It is not enough to have an opt-out feature (which many robo callers do not offer)'' because ''[w]hen I try to speak to a human to get me off the calling list, the person just hangs up on me''); Corgard, No. 596 (a prerecorded call ''will give you the option of being deleted from their list by pressing a certain number,'' but ''[t]his never works'' because ''the recording said it is an incorrect prompt,'' and ''[i]f you press the key to talk to a representative, before you can finish explaining that you are on the federal list, they simply hang up on you''); Anonymous, No. 222 (''I also keep getting pre-recorded calls where the phone number given in the messages is not the same as the Caller ID phone number. When I call the Caller ID phone # to complain, I never reach a person. When I call the phone # from the pre-recorded message, I get a sales person who 'can't' put me on the company's internal Do not Call/Mail, etc lists''); Abramson, No. 122, at 2.

[51] Cook, No. 320 (''I consistently receive . . . prerecorded messages that are for another person . . . every day'' and they ''do not allow me to opt out of the calling list because they are calling the wrong person''); *see* Johnson, No. 532; Thomas, No. 386 (''Even if you do choose to opt out, it takes weeks for it to go into effect, when it should be immediate''); Bankston, No. 382 (''[W]ith ID theft out there I should not have to identify who I am to be removed from their call list''); *but see* Rosato, No. 156 (arguing that ''authentication'' of the opt-out requestor is necessary to prevent others in his household from ''inadvertently'' opting him out).

[52] Byrne, No. 158 (''deluge'' of prerecorded calls makes consumers so ''impatient'' that they hang up before hearing opt-out options, even if they are provided at the outset of a message).

*B. Comments Opposing the Proposed Amendment*

Comments from 73 telemarketers, businesses that use prerecorded calls, their trade associations and technology providers overwhelmingly opposed the proposed amendment, as did 187 of the consumer comments.[53] These comments primarily follow three lines of argument: (1) They question the reliability of the thousands of comments received earlier in this proceeding as indicative of consumer aversion to telemarketing calls that deliver a prerecorded message; (2) They point to surveys that purportedly show that some portion of the consuming public welcomes telemarketing calls that deliver prerecorded messages; and (3) They rely on data concerning consumer responses when opt-outs are provided in prerecorded message telemarketing calls.

1. Previous Comments Inaccurately Reflect Consumer Attitudes

One industry comment argues that ''a substantial number'' of the 13,000 consumer comments opposing a prerecorded call safe harbor should be disregarded because they express dissatisfaction over ''the fact that some telemarketing calls continue to be permitted at all'' or over the breadth of the EBR definition.[54] Other industry comments argue that complaints about calls from companies with which the consumer has no EBR, company-specific Do Not Call mechanisms that do not work, and non-compliance with the Commission enforcement forbearance policy should be addressed by aggressive enforcement, not tighter rules that might limit legitimate EBR-based prerecorded telemarketing messages.[55]

Yet other industry comments contend that the Commission should disregard consumer comments that indiscriminately lump EBR-based telemarketing calls delivering a prerecorded message together in the same hated category as ''cold call'' message blasting.[56] Some of these comments see an indication of some level of consumer support for an EBR exemption because a handful of earlier consumer comments do distinguish between voice blasting and EBR-based prerecorded message calls, and do not object to the latter.[57]

A few industry comments assert that consumers who previously opposed prerecorded telemarketing were responding largely to their experience with ''indiscriminate 'blast' telemarketing'' calls that lacked the type of interactive opt-out mechanisms available now.[58] According to one of these comments, ''to the extent [it] may have been the case in 2004'' that consumers felt ''powerless to make themselves heard'' by a prerecorded message, ''it is not the case today.''[59]

2. The Proposed Amendment Would Burden Sellers and Consumers

Several comments protest that requiring an agreement in writing to receive calls delivering prerecorded messages would be confusing to consumers who are used to receiving these messages.[60] According to these commenters, the requirement would be a major inconvenience for consumers.[61] Others argue that the express written agreement requirement would not be in the best interests of consumers who may not realize the importance of making the extra effort to opt in to receive important messages in the distant future,[62] consumers who change phone numbers,[63] and consumers who must make a ''double opt-in'' when they call for information to authorize a follow-up return call with the information requested.[64]

Other industry comments cite the burden and cost of contacting each person in existing EBR customer databases to obtain their agreement to receive prerecorded calls.[65] Several comments also emphasize the continuing costs of obtaining consent from new customers after the proposed

[53] Combined with the 77 consumer comments arguably supporting a safe harbor for prerecorded calls received in the prior proceeding, 71 FR at 58721 & n.57, these comments represent less than 2 percent of the 14,000 consumer comments in the record.

[54] Consumer Bankers Association (''CBA''), No. 587, at 2. Another contends that ''[n]one of the comments objects *per se* to *all* calls from businesses with which the consumer has an existing business relationship,'' and concludes that the record does not support the elimination of EBR-based prerecorded calls, but would support a narrowing of the EBR definition for such calls. Voxeo Corp. (''Voxeo''), No. 621, at 8,10 (emphasis in original). In a similar vein, some industry comments urge that consumer comments that ''focus on calls already prohibited'' by the TSR should be disregarded. DMA, No. 589, at 5; IAC/Interactive Corp. and HSN LLC (''IAC''), No. 600, at 4; Call Command, Inc. (''Call Command''), Nos. 608, 610 at 4. Other industry comments assert that the 13,000 consumer comments opposing a safe harbor for telemarketing calls delivering prerecorded messages to established customers should be discounted because they ''do not fully or accurately describe the marketplace.'' DMA at 5; VMBC, No. 583, at 1–2 (record not a ''fair representation'' of all consumers).

[55] Soundbite Communications, Inc. (''Soundbite''), No. 575, at 16–17; DMA at 5; IAC at 4; Valley Technology Consultants (Monion) (''Valley''), No. 39, at 1; Interactive Agent Association (''IAA''), No. 568, at 11; MP Marketing Services, Inc. (''MP''), No. 562 at 2; SmartReply, Inc. (''SmartReply''), No. 105, at 5–6; MinutePoll, LLC (''MinutePoll''), No. 540, at 7; Xpedite Systems, LLC (''Xpedite''), No. 595, at 4.

[56] Soundbite at 4–5; IAA at 2, 4; IAC at 4; *cf.* CBA at 2 (urging disregard of prior consumer comments ''not directed at the proposal to create an EBR-based safe harbor for prerecorded telemarketing calls''). *See also*, Chrysalis Software, Inc. (Ramsay), No. 79 (''[T]he focus of [FTC] attention should be calls generated from companies unknown to the callee, such as those that have purchased a phone directory''); Zucker at 1 (Proposed amendment intended to stop ''voice blasting'' by ''phone spammers'' goes too far in covering EBR-based prerecorded calls).

[57] IAA at 4 n.4. *See, e.g.*, Castellon, No. 471; Castro-Arellano, No. 472; Manley, No. 112.

[58] Soundbite at 5, 10–11. *See also* VMBC at 1; DMA at 5; IAC at 3 (noting that it still may be true that ''consumers generally have had only limited experience with prerecorded messages that provide a simple opt-out mechanism'').

[59] Soundbite at 6.

[60] IAA at 6; *cf.* Xpedite at 5 (asserting that because of differences between the FCC rule permitting prerecorded calls to EBR customers and the proposed amendment, consumers will have ''no clear picture of when and for whom an EBR permits a prerecorded telemarketing call, and when and for whom it does not''); DMA at 6.

[61] VMBC at 2; Capelouto Termite & Pest Control, Inc. (''Capelouto''), No. 131, at 1; National Newspaper Association (''NNA''), No. 578, at 4 (providing consent more burdensome than receipt of a prerecorded reminder message about an expired subscription); SmartReply at 17; IAC at 9 & n.15; IAA at 5 n.5; *see* DMA at 5. Consumers who oppose the proposed amendment also criticize the requirement of an express written agreement as burdensome, *e.g.*, Kelly, No. 457; Maruca, No. 602; Schmitz, No. 520; a ''pain,'' *e.g.*, Carnes, No. 451; Rososer, No. 426, or ''a waste of time.'' *E.g.*, Lemkin, No. 31; *see* Martin, No. 437 (''big burden on my time'').

[62] CenterPost Communications (''CenterPost''), No. 591, at 1.

[63] Soundbite at 9; SmartReply at 18. This problem may be minimized by FCC regulations requiring Local Number Portability and Wireless Number Portability.

[64] MP at 2; Career Education Corp. (''Career''), No. 580, at 3. Other comments, apparently not considering the flexibility ensured by E–SIGN, incorrectly argued that this requirement would be ''impractical'' or would not work when consumers call for information. DMA at 5; MinutePoll at 1, 9; Soundbite at 9; IAC at 9; MP at 2; Bernhardt at 1.

[65] These comments also assume that the required written agreement must be obtained on paper. IAC at 9–10 (a direct mail piece to obtain a written agreement from HSN's ''millions'' of EBR customers on a postage paid postcard would cost $.75 to $1.75 per customer and ''will be a lengthy, resource-intensive endeavor''). *See also* SmartReply at 17–19 (estimating a cost of $9,350,000 for a ''Top 100 Retailer'' in the ''Fortune 500'' with a database of 15 million customers to obtain such agreements via direct mail, a cost of $360,000 to $600,000 to revise and reprint 3–5 million credit card and loyalty applications, with ''at best'' a reduction in EBR customer databases of ''90% or more''); DMA at 5. Individual commenters opposed to the proposed amendment cite the burden on business of complying. *E.g.*, Cook, No. 631; Hunley, No. 644; Simmons, No. 507.

amendment takes effect,[66] and other costs they believe will be significant.[67]

The industry comments stress that prerecorded message telemarketing costs significantly less, and is more effective than the only alternatives that are available—direct mail,[68] live calls,[69] and email.[70] Three comments insist that there simply ''is no other cost-effective communication method'' available for businesses for which the timeliness of delivery of high-volume messages to customers is critical.[71] Other comments assert that prerecorded messages are the only affordable option for businesses to communicate with their customers.[72]

Several comments point out that the higher cost of using such alternative marketing methods will be passed on to consumers if, as they fear, businesses are unable to obtain the consent of a significant number of their customers to receive prerecorded messages.[73] One comment doubts that obtaining enough consents is likely, and accordingly asserts that the ''practical effect'' of the proposed amendment would be that ''telemarketers could not communicate with [their] customers through prerecorded messages.''[74] Moreover, a number of industry comments argue that the proposed amendment will disproportionately harm small business telemarketers,[75] and the small businesses that are their clients.[76] Some small telemarketers assert that the proposed amendment ''would reduce our revenue by 85%,'' and that continuation in business ''would require the termination of most of our existing employees'' and an effort to ''outsource the vast majority of our labor force to call centers in foreign countries.''[77]

Finally, some comments that oppose the proposed amendment argue that by lumping sophisticated interactive message systems that may include advanced voice recognition together with non-interactive systems, the proposed amendment would ''stifle the advancement of potentially beneficial media.''[78] Accordingly, many favor application of the written agreement requirement only to non-interactive prerecorded calls.[79]

3. Survey Evidence of Consumers' Attitudes Toward Telemarketing Calls that Deliver Prerecorded Messages

Industry commenters submitted three online consumer preference surveys as indicative of consumer support for telemarketing calls that deliver a prerecorded message with a prompt opt-out.[80]

Minutepoll submitted a survey of 388 consumers and advanced it as evidence that there is a ''significant minority'' of consumers who prefer prerecorded calls to live calls. Most of these survey respondents—82 percent—said they had placed their phone numbers on the National Do Not Call Registry. When asked in the abstract, 70.1 percent stated that they would prefer ''live operator'' calls, whereas 29.9 percent said they would prefer a prerecorded message.[81] When given the choice of a prerecorded call with a ''quick option to get on the calling company's 'Do not Call list,''' or a live operator call that ''would not be required to do this,'' 68.3 percent said they would prefer the prerecorded message and only 31.7 percent said they would prefer the live call.[82] In

[66] IAC at 9 n.17 (contending that ''even if companies design systems to seek and obtain consent in a compliant manner when consumers place orders by telephone, such systems also involve significant costs,'' and that ''[i]n addition to design, recordation and retention costs, each customer contact would take more time,'' necessitating the ''need to employ additional personnel or risk dropped calls''); Career at 3 (costs would increase by $3.58 million a year); SmartReply at 41 (on-going costs would not be *de minimis* because National Retail Federation research shows that ''retail companies face a customer attrition rate of between 33% and 50% per year''). *See also* IAA at 5–6); NNA at 4; Call Command at 5; MinutePoll at 9; *cf.* Nolte, No. 429 (objecting that the cost of obtaining consent would be ''a waste of time and money that could go to passing on additional savings to me''). Two individual comments also doubt that it would be practical for businesses to keep the required written agreements on file. Bender, No. 62; Haas, No. 76.

[67] SmartReply at 20–21(loss of revenue from need to use less efficient marketing alternatives than current $10.00 gross return for every dollar of prerecorded message marketing, loss of brand value and customer ''goodwill'' that would devalue stock prices of publicly traded retailers); MinutePoll at 9 (cost of retrieving paper records now ordinarily destroyed after entry of information in EBR database would be especially burdensome and expensive); National Newspaper Association (''NAA''), No. 578, at 10–11 (noting that 20 percent of the newspaper industry has its own prerecorded call equipment that would be of limited use given difficulty of obtaining consumer consent).

[68] SmartReply at 17 (Interactive message calls ''run about 20% of the cost of the next best medium—direct mail''); Call Command at 3–4 (Direct mail costs are ''ten times higher''); Career at 1 (Prerecorded call response rates are ''*more than twice* as high as for communications by mail'') (emphasis in original); IAC at 5; Compton (''Vontoo CEO''), No. 47, at 1; MinutePoll at 10. *See also* SmartReply, Inc., ''Measuring and Deducing Consumer Acceptance of Live Pre-recorded Calls with Prompt Opt-Out Mechanisms Across Ten Companies over Eight Months'' (''SmartReply Study''), No. 106, at 11 (stating that a comparison of 82 client campaigns shows similar response rates for direct mail and prerecorded calls, but customers responding to the calls out-spent those responding to direct mail ''by 175%'').

[69] IAA at 1 n.2 (a prerecorded call ''costs about $0.25,'' whereas industry surveys show that the cost of a live call to a consumer ''is from $3.75 to $5.30''); MinutePoll at 8, 10 (would have to charge clients ''ten times our current rates per lead'' for live calls); IAC at 5.

[70] Career at 1 (prerecorded call response rates are ''*ten times higher* than for communications by email'') (emphasis in original); MinutePoll at 8; IAC at 5 (email messages are ''less effective than telephone messages'' because many consumers ''check their voicemail but not their home email daily''); IAA at 5–6 (email messages may not ''get past spam filters''); Vontoo CEO at 1 (retirees ''often do not have email'').

[71] IAC at 2 and 5: SmartReply at 39; Messagebroadcast.com (''Message''), No. 599, at 6.

[72] NNA at 4 (small community newspapers); *cf.* Career at 3 (''no choice'' but to use live operators at a much higher cost); MinutePoll at 7 (proposed amendment ''will result in a substantial increase in live operator calls''); *see, e.g.*, Metcalf, No. 482 (''more live calls will make a lot of consumers a lot more miserable'').

[73] IAA at 2; MinutePoll at 8; SmartReply at 17; Vontoo, LLC (''Vontoo'') at 3. Several consumers opposed to the amendment also worry that businesses will not be able to obtain enough written agreements from consumers to continue providing messages they value. Shaw, No. 650; *see* Long, No. 629; Christianson, No. 27.

[74] IAA at 1; *cf.* IAC at 5 n.9 (cost likely to be so great that not all sellers may be able to afford it, thus depriving consumers of messages they want); IAA at 10 (''[e]conomics dictates that prerecorded messages are less likely to be available to consumers''); Message at 6; *cf.* NNA at 3 (community newspapers ''struggle to create sufficient work for call centers to cover basic overhead costs'' which is why ''voice messaging options have become more popular'' because ''the revenue driven by them also can pay for heightened customer service''). Consumers opposing the amendment also express concern about the continued availability of information and offers they value. *E.g.*, Ashroff, No. 627; Noack, No. 642; Szczepanik, No. 646.

[75] MinutePoll at 8 (amendment ''would have a severe, disproportionate effect'' on small telemarketers that lack ''resources from other lines of business to offset the loss of revenue'' and ''sufficient scale to operate a large cost-effective live call center,'' with ''likely effect'' of ''industry consolidation''); Vontoo at 2 (''disproportionately severe'' impact on small businesses''); SmartReply at 24 (businesses that provide prerecorded message services ''are generally small businesses [with] less than $10 million in revenue'').

[76] MinutePoll at 1 (''proposed rule would drive up marketing costs for small businesses''); SmartReply at 24; *but cf.* MP at 2 (amendment ''would force our clients to go to other vendors who already offer direct mail and live telemarketing'').

[77] MinutePoll at 8; TCIM Services, Inc. (''TCIM''), No. 15, at 1–2; Valley at 1. Many of the consumers who oppose the proposed amendment express concern that ''thousands'' of American jobs will be lost to foreign call centers. *E.g.*, Catalan, No. 480; Vivanco, No. 501.

[78] *E.g.*, Maxwell, No. 20; Auburn, No. 129; Runyan, No. 61; Wetzel, No. 95.

[79] *E.g.*, Direct Mail Express, Inc., No. 138; Zucker, No. 164, at 1; Duke, No. 54; Lane, No. 53.

[80] The Commission notes, however, that none of these surveys allowed respondents to state a preference for receiving prerecorded calls only from sellers to whom they had given their prior written agreement to accept such calls pursuant to the proposed amendment. Thus, these survey results cannot purport to reflect consumer attitudes toward the proposed amendment, and are not probative of the extent to which consumers might prefer consent-based prerecorded calls over prerecorded calls with a prompt opt-out mechanism.

[81] MinutePoll, Exh. A, at 1. The MinutePoll survey reports a margin of error of 5 percent.

[82] MinutePoll, Exh. A, at 2. While taking care to articulate that the TSR does not require sales agents to disclose affirmatively that consumers can ask to be placed on the seller's do not call list, this survey omits any reference to the TSR requirement that sales agents honor a consumer's assertion of a do

responses to open-ended questions, however, 54 percent of those who said they preferred prerecorded messages generally or on some occasions indicated that a reason for this preference was simply because they would be ''[a]ble to hang up.''[83]

A second online survey of 5,328 consumers conducted by Forrester Research for VMBC purports to show that consumers prefer prerecorded over live calls ''on average at a rate of two to one, across different age, income, geographic, and technological groups.''[84] The survey reports that when given a choice between a recorded message that ''electronically provides me with the opportunity to either be removed from future calls, be transferred to a live representative, or end the call'' or ''[a] call from a live telephone representative who begins talking without providing [those options],'' from 57 percent to 71 percent of the Internet users surveyed, depending on ''age, income, geographic and technographic groups,'' stated that they would prefer the recorded message, with an average of 63 percent across all groups.[85]

The findings of a third online survey of some 470 Internet users, 78 percent of whom had received an ''automated'' call within the past 12 months,[86] raise unanswered questions about the consumer preferences elicited in the MinutePoll and VMBC surveys. This survey, conducted for Silverlink by the Zoomerang Online Survey Service, was submitted to show that consumers are willing to receive prerecorded healthcare-related calls.[87] The survey shows, however, that consumers may be far less willing to receive commercial prerecorded telemarketing calls than the other two surveys might appear to suggest. The Silverlink Survey reports that 91 percent of the participants said they would be unwilling to listen to a prerecorded telemarketing call from their financial services company offering a new credit card at a discounted rate, that 87 percent would be unwilling to listen to a prerecorded telemarketing call from their travel agent offering a discounted vacation package, and that 41 percent would even be unwilling to listen to a health-related prerecorded telemarketing call.[88]

4. Indirect Evidence Regarding Consumers' Attitudes Toward Telemarketing Calls that Deliver Prerecorded Messages

A number of industry comments cite indirect evidence of consumer acceptance of prerecorded message calls that incorporate an interactive opt-out mechanism. Summing up this line of argument, DMA asserts that ''over the past two years, companies that use the prompt opt-out as mandated by the safe harbor have found that the opt-out rate is fairly low,'' and that this shows ''that consumers often welcome prerecorded messages from entities with which they have [an EBR].''[89] While several comments from telemarketers claim opt-out rate percentages that may appear to support this contention,[90] only two—Global[91] and SmartReply[92]—provide the information necessary to evaluate the claims. However, their results—less than 2 percent for Global and 0.4 percent for SmartReply—are based on

not call request. It is a violation of the TSR to deny or interfere ''in any way, directly or indirectly, with a person's right to be placed on any registry of names and/or telephone numbers of persons who do not wish to receive outbound telephone calls established to comply with §310.4(b)(1)(iii),'' 16 CFR 310.4(b)(1)(ii), or to initiate ''any outbound telephone call to a person when that person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered.'' 16 CFR 310.4(b)(1)(iii)(A).

[83] MinutePoll, Exh. A, at 1–2. Similarly, of the 68.3 percent who preferred prerecorded messages with a quick ''DNC opt-out,'' 33 percent indicated they made that choice to ''[g]et them to stop calling/get off the list'' and 16 percent did so to be able to ''hang up easier/without guilt.'' *Id.*

[84] VMBC at 1, *citing* Forrester Research's Consumer Technographics, NACTAS Q3 2006 Omnibus Online Survey (''VMBC Survey''), No. 584. The survey reports a margin of error of ± 1.3 percent. VMBC Survey at 1.

[85] VMBC Survey at 1.

[86] Survey respondents were told that an ''automated'' call means ''a call made to your home in which you *interact* with a recorded voice rather than a live caller.'' Silverlink Communications, Inc. (Rubin) (''Silverlink Survey''), No. 217, Attach. A, at 2 (emphasis added). The Silverlink Survey reports a margin of error of ''just above 4%.'' Silverlink (Rubin), Attach. B, at 1.

[87] The survey indicates that 45 percent of those surveyed ''would like'' or ''would not mind'' having their health plan or pharmacy deliver automated message reminders of routine screenings or tests recommended by their doctor, immunization reminders for themselves or their children, or prescription refill reminders. Silverlink Survey at 4.

[88] Silverlink Survey at 7. Thirty-six percent of survey respondents indicated they would find a prescription refill reminder helpful, compared to 45 percent who would not; 42 percent indicated they would find an automated reminder of doctor-recommended routine screenings or tests helpful, compared to 36 percent who would not; and 30 percent would find an automated immunization reminder helpful, compared to 51 percent who would not. Silverlink Survey, Attach. A, at 2.

[89] DMA at 4; NNA at 3 (newspapers' company-specific do not call lists are ''typically small and in some cases nonexistent''); IAA at 10 (''low opt-out rates experienced by members' clients'' are ''consistent with'' low opt-out rates reported in original VMBC petition); Soundbite at 6 n. 13 (''usually in the low single digits''); Protocol Integrated Direct Marketing, No. 535, at 1(citing unspecified ''low opt-out rates''). Some comments also contend that anecdotal evidence of few complaints shows consumer acceptance of prerecorded messages. NNA at 3 (no complaints to community newspapers); Snoozester, Inc., No. 49, at 1 (only 4 complaints out of ''hundreds of thousands of calls my company has made''); Capeluto Termite & Pest Control, Inc. (''Capeluto''), No. 131, at 1 (2 complaints out of 50,000 calls).

[90] Most of these comments fail to provide any underlying data necessary to evaluate the claims. Two indicate that the stated opt-out rates combined data from calls where the opt-out mechanism was a keypress option and calls where they provided a toll-free number requiring a return call that consumers may be less inclined to take the time to make. MP at 1–2 (9–11 percent opt-out rate with interactive messages ''for *most* of our programs'') (emphasis added); CenterPost at 2 (0.7 percent opt-out rate for prescription refill and insurance policy renewal calls where ''75 percent of all calls'' had ''in-call opt-out included''). Others do not state whether the percentage was calculated based only on the number of opt-outs when the prerecorded message was actually answered by a consumer (as opposed to the number of opt-outs for all calls placed, which may include messages left on answering machines, calls that go unanswered by a person or machine, and busy signals). MinutePoll at 4 (8–10 percent opt-out rate with up-front keypress opt-out, but no indication if based only on live answers); VMBC at 2 (3.1 percent opt-out rate with ''easy'' up-front opt-out); *cf.* Xpedite at 4 n.11 (1 percent opt-out rate for calls providing opt-out telephone number); Countrywide Home Loans, Inc. (''Countrywide''), No. 592, at 2 (''less than 1%'' opt-out rate for messages left only on voicemail and answering machines). Two comments provide none of this information, Call Command at 2 (1.14 percent opt-out rate with no indication of type of opt-out or how computed); Vontoo at 2 (50 of 12,000 ''persons called'' (0.4 percent) in a single campaign opted out), and two others indicate they did not provide the opt-out option until the end of the call, when it may have been less likely to be used (*e.g.*, if the consumer had already hung-up); Message at 1 (0.38 percent opt-out rate where calls provided a keypress option at the end of the message); Draper's and Damon's (''Draper's''), No. 108, at 1 (less than 1.36 percent opt-out rate where a keypress option was provided at the end of the message).

[91] Global Connect Strategic Broadcasting (''Global''), No. 620, at 5, 19–20 (less than 2 percent opt-out rates with keypress opt-out for messages offering casino/hotel discount promotions answered by a live person).

[92] SmartReply Study at 3 (0.4 percent opt-out rate for messages offering discount promotions from 10 of top 15 ''Fortune 500'' retailer clients). SmartReply asserts that the low opt-out rate reported shows ''that some [prerecorded] calls are more relevant [to consumers] than others,'' and that the existing EBR requirements ''sufficiently guarantee that most of these calls will be relevant enough that a significant majority of consumers will listen to the call month after month, even when given an easy, free and immediate mechanism to opt out of future calls.'' *Id.* Although the data shows that 148,516 of the 4,894,950 customers who answered the first call (3 percent) also answered and listened to some or all of each of the seven subsequent monthly messages, consumers who failed to pick up and answer any one of the calls were excluded from further study, even if they subsequently answered a call. SmartReply also contends that consumers must find the monthly calls ''relevant and non-intrusive,'' because the data indicates that 90 percent of the customers who answered all eight calls listened to the prompt opt-out option, and on average, 67 percent continued to listen to three quarters or more of the message. *Id* at 6–7. SmartReply further compares opt-out rates for prerecorded calls that were answered with those for messages left on answering machines with a toll-free opt-out number, and concludes that customers are ''300% more likely'' to make use of the interactive opt-out mechanism than the toll-free number. *Id.* at 10–11.

campaigns for unique clients. Moreover, to the extent that Global provides data on the number of consumers who ''opted out'' simply by hanging up the telephone, the results indicate that a significant percentage of consumers may not welcome such calls.[93] Thus, the low opt-out rates reported do not tell the whole story and do not necessarily reflect typical consumer acceptance of prerecorded calls with a prompt opt-out mechanism, or provide a reliable measure of consumer acceptance of such calls.

A few comments also assert that affirmative actions taken by consumers in response to interactive opt-out prerecorded messages manifest consumer satisfaction with such calls.[94] One comment claims that ''66–82% of customers renew a policy or prescription . . . ; 33–48% of customers select additional products or services along with the renewal; and 5–13% of customers renew policies prior to lapse.''[95] Another notes that a major entertainment retailer that ''realized a 6% response to their direct mail offer'' obtained an ''11.5% response when it supplemented the direct mail offer with a prerecorded message campaign.[96] Similarly, a third asserts that a study of 82 client campaigns showed that consumer spending in response to prerecorded messages was 175 percent greater than spending in response to a direct mail campaign.[97]

A number of comments contend that this evidence of the existence of a ''subset'' of consumers who may want and ''expect to receive'' at least some prerecorded telemarketing messages rebuts any possible contention that prerecorded telemarketing messages are ''coercive or abusive,''[98] and undercuts support for the proposed amendment.[99]

5. Alternatives to the Proposed Amendment

Some of the industry comments continue to urge the Commission to conform the TSR to FCC regulations that permit calls delivering prerecorded messages if a seller has an EBR with the called consumer. A few recommend reconsideration and adoption of the safe harbor for prerecorded message calls that the Commission had originally proposed in response to the VMBC request. Most, however, advocate one or more refinements of the original VMBC safe harbor proposal in an effort to reduce the likelihood that prerecorded calls would be ''coercive or abusive.''

a. Comments Arguing that the EBR Exemption Should be the Only Limit on Placing Calls that Deliver Prerecorded Messages, and that the Original Safe Harbor Proposal Should be Adopted

Some industry comments continue to insist that the TSR's existing EBR exemption from the prohibition against calls to numbers listed on the National Do Not Call Registry should apply equally to live calls and prerecorded calls.[100] They argue that the EBR exemption properly effectuates the purpose of the TSR and the Telemarketing Act by protecting consumers from unwanted cold calls and is critical to businesses.[101] They also reiterate previous assertions that the exemption should apply to prerecorded calls to minimize inconsistency between the TSR and parallel FCC regulations.[102] These contentions, however, were considered and rejected by the Commission when it considered adopting a prerecorded call safe harbor, and there is nothing new in the more recent comments that would warrant reconsideration of the Commission's previous conclusions.

A few industry comments ask the Commission to revisit creation of the EBR-based safe harbor for prerecorded messages it previously proposed in response to the VMBC request.[103] One reiterates the view previously advanced by many in the industry that the safe harbor proposal would protect consumers and ''was supported by the record and constituted a useful step in the direction of harmonizing the Commission's regulations with those of the FCC.''[104]

Several comments question some of the concerns the Commission expressed in rejecting its original safe harbor proposal. One contends that the evidence in the record that prerecorded messages could pose a health and safety threat is ''anecdotal,'' and that ''any concerns about isolated instances of prerecorded calls tying up a phone line so that emergency calls cannot get through would be completely avoided'' by provision of an automated interactive opt-out mechanism.[105] A few industry comments also opined that the Commission is unduly concerned about

[93] Global at 19 (showing hang-up rates before the opt-out message of from 23–68 percent, with a mean of 46 percent and a median of 48 percent, in 13 separate sets of calls).

[94] *E.g.*, Message at 2–3 (citing increased customer response rates in client campaigns). None of these comments provided underlying data that would permit an independent assessment of the claims.

[95] CenterPost at 1. This comment is unclear as to whether the percentages provided refer only to prerecorded message calls that are answered. CenterPost also reports that in two voluntary health-related surveys it conducted that invited consumers to answer a single question assessing their satisfaction with an interactive prerecorded message offering prescription refill reminders and information, 89.4 percent indicated they found the ''notification'' to be ''useful'' in one survey and 94 percent were ''extremely'' or ''highly'' satisfied in the other. *Id.* at 1–2. Because these two surveys apparently were conducted after the refill offer was made, the satisfaction percentages necessarily excluded consumers who may have chosen to hang up on the call or opt out from future calls.

[96] VMBC at 2.

[97] SmartReply Study at 11–12.

[98] *See* Smith, No. 544 (does not find prerecorded messages coercive or abusive). Other consumers who oppose the proposed amendment say prerecorded messages are ''not a problem,'' *e.g.,* Arce, No. 469; Marquez, No. 507; Yanes, No. 485; are ''less intrusive and coercive,'''' or simply ''less invasive'' than live calls, *e.g.,* Azcurra, No. 467; Hernandez, No. 475; Torres, No. 496; because they find it easier to hang up on a recording, *e.g.,* Boricean, No. 470; Kheriaty, No. 44; Shimko, No. 127; they prefer not having to deal with ''pushy telemarketers,'' *e.g.,* Castellon, No. 471; Morales, No. 505; Villasenor, No. 500; and find prerecorded messages easier to understand than a script read by a disinterested telemarketer, *e.g.,* Christianson, No. 27; Lemkin, No. 31; Wiggen, No. 28, or an offshore telemarketer with a foreign accent. Auburn, No. 129; Zucker, No. 164, at 1.

[99] MinutePoll at 6; SmartReply at 25–26; *cf.* Message at 6 (asserting the prerecorded messages that comply with the law are not coercive or abusive); Superior Communications and Consulting (''Superior''), No. 632, at 2 (arguing that an EBR-based prerecorded message that ''results in a sale of goods or services'' is not ''unwanted or abusive''). Two comments also protest that ''there has been no study proving that prerecorded calls are inherently abusive.'' Vontoo at 2; Message at 6.

[100] DMA at 1, 3 (the same public policies apply equally to live and prerecorded calls); Xpedite at 4.

[101] DMA at 4; IAA at 3–4, *citing* House Report No. 103–20, 1994 U.S. Code Cong. & Admin. News, at 1626. Two cite a December 2005 Harris poll conducted for the FTC in which 92 percent of adults with numbers on the Registry reported receiving fewer telemarketing calls as evidence that the EBR exemption ''strikes the appropriate balance'' between protecting consumers from unwanted calls and allowing businesses to use a variety of methods including prerecorded messages to transmit marketing offers to their customers. Verizon, No. 588, at 1; Superior at 2.

[102] DMA at 6; Verizon at 6–7; Bank of America (''BoA''), No. 572, at 3; National Association of Realtors (''NAR''), No. 101, at 1; TCIM at 1; Commerce Energy Group, Inc., No. 598, at 1. Two comments object that ''there normally is no question of 'call abandonment' regarding prerecorded message calls,'' and therefore that ''[*a*]*ll* prerecorded message calls should be exempted from the call abandonment requirement, or found compliant if the message starts within two seconds.'' Verizon, Attach. A, at 4–5 (basing the objection on the lack of ''hang-ups'' and ''dead air'' with prerecorded messages, but conceding that there may be a ''separate policy reason'' for restricting such messages); Beautyrock, Inc. (Body) (''Beautyrock''), No. 12, at 1.

[103] CBA at 1; Message at 5; *cf.* NAR at 1–2 (suggesting that the FTC require, as in the safe harbor proposal, a ''toll-free number or other means to opt out'').

[104] CBA at 8–9. The Commission disagrees that it is obliged to conform its Do Not Call requirements to the parallel requirements of the FCC. *See* 71 FR at 58719–20, 58724–25.

[105] MinutePoll at 7. The comment also argues that ''the record does not indicate that prerecorded calls last any longer or occur any more frequently than live operator calls,'' and thus pose no greater threat to health or safety. *Id.*

the likelihood that a safe harbor for low-cost prerecorded messages could ''substantially increase the volume of telemarketing calls,'' and that any such concern is ''speculative.''[106] Others criticize the NPRM for giving ''inadequate consideration'' to sellers' ''strong incentives to avoid alienating existing customers with excessive reliance on prerecorded messages.''[107] At least one comment argues that the low cost of Voice over Internet Protocol (''VoIP'') calling ''will not engender a significant increase in call volume over today's levels'' because ''long distance rates for high-volume users are already extremely low.''[108]

Nevertheless, two industry comments oppose any reconsideration of the original safe harbor proposal. One contends that the FTC was right to reject the proposal as ''too unreliable or too burdensome for the consumer,'' criticizing its contemplated reliance on live operators to implement company-specific opt-outs in particular.[109] One industry comment goes even further, contending that mainstream interactive message technologies *are* ''coercive and abusive,'' ''[a]s supported by the factual record compiled by the Commission,'' explaining:

> '[P]rerecorded message' telemarketing, as it currently exists, consists largely of one-way audio broadcasts designed to convey information to consumers. Such messages are nothing other than outbound streaming audio files which convert the telephone (traditionally an instrument of two-way communication) into a radio (an instrument for listening). These campaigns are widely regarded as a nuisance and a burden to consumers because consumers are powerless to interact with them.[110]

Considering this viewpoint and industry's previous opposition to the original safe harbor proposal, the Commission concludes that the prior safe harbor proposal should not be resuscitated. This conclusion is bolstered by the many divergent industry suggestions for modifying the proposal, discussed immediately below, and, of course, the strong consumer opposition to the original proposal and support for the current proposal.

b. A Modified Safe Harbor Should be Considered

The great majority of the industry comments ask the Commission to revisit and refine its prior safe harbor proposal, rather than adopt the proposed amendment. They argue that a safe harbor for prerecorded telemarketing messages with an interactive opt-out is necessary for businesses to provide many important and convenient messages to consumers who wish to receive them.[111] Although, as the Commission has emphasized, the TSR does not cover purely ''informational'' messages,[112] the current round of industry comments provides numerous examples of messages that fall within the purview of the TSR because they combine information with a direct or indirect solicitation.[113]

In urging the Commission to allow telemarketing calls that deliver prerecorded messages and require that they include an interactive opt-out mechanism,[114] many industry comments propose one or more modifications of the original EBR-based safe harbor proposal to reduce the likelihood that prerecorded calls would be ''coercive or abusive.'' Several of the comments acknowledge that industry opposition in 2004—on the basis that the required technology to implement the keypress opt-out mechanism would be ''costly, burdensome, and not widely available''—was a factor in the Commission's withdrawal of the original safe harbor proposal.[115] Many accordingly take pains to point out that interactive keypress and voice-activated technologies have become ''readily available'' and ''cost effective,''[116] and therefore contend that a mandatory interactive keypress opt-out requirement would now be ''feasible.''[117]

[106] CBA at 3; DMA at 5–6 (acknowledging that ''it is theoretically possible that there will be a large number of prerecorded messages'' because of their lower cost than live calls, but contending, based on discussions with its members, that live calls will continue to exceed prerecorded messages, which are most ''useful in specific, targeted applications'').

[107] CBA at 3 (citing the low opt-out rate reported in VMBC's petition as evidence of this self-restraint, and arguing that start-ups and other companies in highly competitive lines of business share the same incentives); *see* IAA at 6 (prerecorded messages are most likely to be sent by established firms, with the strongest incentives for self-restraint, rather than start-ups or fly-by-nights). Two comments assert that ''more than 80% of consumers are on the national do not call list,'' and this fact deters abuse. MinutePoll at 6; IAC at 3. Another says market research shows that retailers face customer attrition rates of between 33 percent and 50 percent each year, and contends they devote their resources to ''targeted marketing that quickly abandons non-productive customers,'' rather than to efforts to minimize this attrition by means of low-cost prerecorded calls. SmartReply at 41–42.

[108] MinutePoll at 7 (arguing that equipment and facilities charges, ''not transmission expenses'' are a significant cost factor, but providing no evidence to support that contention); *cf.* Zucker at 1 (arguing that the cost of VoIP ''is not any different'' from the current cost of long distance service for high-volume users since the largest VoIP providers are all telephone companies ''for whom VoIP is replacing their regular [long distance] offering'').

[109] Voxeo at 5; *cf.* Global at 6 (also implicitly criticizing the lack of an automated opt-out requirement).

[110] Interactions Corp. (''Interactions''), No. 571, at 1 (adding that mainstream ''interactive voice response (IVR) systems [that] rely on either touch-tone input (which severely limits the consumer's ability to communicate or direct the interaction) or frustratingly ill-equipped voice recognition technologies (which require the consumer to talk using sound bites and keywords that can be recognized by the IVR and in the order and in the fashion dictated by the IVR)'' are ''generally considered more intrusive and more of an invasion of privacy'' primarily ''[b]ecause these forms of 'prerecorded messages' have no ability to listen to, understand or truly interact with consumers in a natural and conversational fashion'').

[111] The industry recognizes that informational messages that include a sales offer are ''telemarketing'' messages, but argues that such messages provide consumers with ''information they desire, in a format they prefer,'' DMA at 4; IAA at 2; Message at 6; *cf.* Soundbite at 5 (consumers would be ''frustrated'' by an ''incomplete'' message that omitted the sales component to ensure that the message was strictly informational); SmartReply at 39 (purely informational messages would be ''less relevant'' and consumers would be less happy to get them). At least one argues that a safe harbor is also necessary to prevent a ''chilling effect'' on informational calls in view of industry ''uncertainty as to the regulatory dividing line between informational and telemarketing calls.'' Xpedite at 5; *see also* Global at 9 (an up-front keypress opt-out option would ''alleviate any ambiguity between an informational message and a promotional message''); NAR at 1; Zucker at 1.

[112] 71 FR at 58719, 58725.

[113] The comments cite such examples as expiration and renewal reminders (*e.g.,* DMA at 4 (magazine subscription); NNA at 2 (newspaper subscriptions); Soundbite at 4; Capelouto at 1; Tiesenga, No. 651 (snow removal service); Wussler, No. 97 (termite inspection); Kelly, No. 457 (bank CD renewal)); airline flight upgrade and rebooking offers (*e.g.,* DMA at 4; IAA at 8–9; Beatty, No. 22; Romoser, No. 426); overdue payment notices with incentives to pay promptly (*e.g.,* DMA at 4; Xpedite at 1; Romoser (overdue mortgage payment offer)); bounced check and overdraft alerts with overdraft protection offers (*e.g.,* Soundbite at 4; Christianson, No. 27); insurance lapse warnings with renewal offers (*e.g.,* CenterPost at 1; Craig, No. 110; Rosato, No. 156); invitations to special retail sales and events (*e.g.,* Draper's at 1; SmartReply at 8; Long, No. 629; Tiesenga, No. 651); cell phone and wireless plan savings offers (*e.g.,* Soundbite at 4; Carnes, No. 451; Rankin, No. 136); reminders of prior-year purchases (*e.g.,* SmartReply at 14 (flowers for birthdays or anniversaries)); ticket offers for musical events (*e.g.,* Shaw, No. 650; Tiesenga, No. 651); car service reminders and lease and warranty expiration offers (*e.g.,* Minkoff, No. 183, at 1; AutoLoop, LLC (Anderson, Steve), Nos. 63, 184, at 1; Cronin, No. 655; VanHaaren, No. 623); lower interest rate offers (*e.g.,* Countrywide at 2 (refinancing); Geyerhahn, No. 153 (refinancing); Knoll, No. 162 (credit card)); time-sensitive sales notifications (*e.g.,* Agranovsky, No. 19 (eBay end-of-bidding alerts); Gutierrez, No. 82 (stock market alerts)); and local promotions (*e.g.,* Simmons, No. 648 (pre-order offer for school photos); Szczepanik, No. 646 (sports league paraphernalia offers)).

[114] *E.g.,* Bender, No. 62; Haas, No. 76; Kheriaty, No. 44.

[115] 71 FR at 58725. *E.g.,* Xpedite at 2–3; Voxeo at 6; DMA at 3.

[116] *E.g.,* IAC at 3; DMA at 3; Xpedite at 3; Global at 8; MinutePoll at 9.

[117] DMA at 3; Xpedite at 3. At least one industry comment argues that interactive prerecorded calls allow consumers to assert company-specific opt-outs even more ''quickly, effectively and efficiently'' than live calls. Schwartz, No. 640, at 3 (citing the test proposed by the Commission for approval of a safe harbor for prerecorded calls in 71 FR at 58718, 58725).

Most of the industry commenters now are willing to support a safe harbor for prerecorded calls to EBR customers that includes an interactive opt-out mechanism utilizing Interactive Voice Response (''IVR'') technology.[118] As summarized below, the industry proposals include recommendations for: (1) refinements in the prompt keypress opt-out requirement; (2) disclosure of the nature of the EBR that permits the call; (3) limitations on the permissible frequency and duration of prerecorded calls; and (4) restrictions narrowing the scope of permissible EBRs for prerecorded calls.

i. Prompt Keypress Opt-Out Option

The industry proposals for modifying the original safe harbor begin by suggesting that prerecorded messages be required to provide an interactive keypress or voice-activated mechanism that would allow consumers to make a company-specific opt-out request after the message informed consumers of this option at the outset of the call.[119] They appear to take for granted what only one comment explicitly advocates, that the keypress option should be active throughout the prerecorded message.[120]

Some comments assert that the simplicity of such a mechanism will make prerecorded messages convenient and efficient for consumers and businesses.[121] Two comments further submit that the prompt availability of such a convenient company-specific opt-out mechanism would prevent prerecorded calls from being ''coercive.''[122] One comment notes that such an option would at least alleviate concerns about consumers' inability to interrupt a prerecorded message to ask to be placed on the company's do not call list.[123] Another emphasizes that the requirement will create a powerful and ''immediate incentive to companies not to abuse prerecorded telemarketing by flooding consumers with a large number of calls of questionable value'' because once a consumer opts out, the company will be barred from placing *any* future calls, live or prerecorded, to the consumer.[124]

The comments differ, however, on the precise details of how a prompt keypress opt-out option should function.[125] Most recommend that a single keypress should trigger an automated opt-out, without the intervention of a live operator, so that a ''consumer knows with certainty that they have made the request.''[126] However, one comment argues that businesses should have the option of using customer service representatives to take opt-out requests, rather than an automated system,[127] while another seeks the flexibility to require a second keypress to confirm an opt-out request.[128] Likewise, one comment suggests that an automated opt-out keypress should lead directly to immediate termination of the call after a recorded brief acknowledgment of the request,[129] without requiring navigation of any intervening submenus, while another recommends a limit of two layers of submenus.[130] Finally, many of the comments appear to suggest that an automated opt-out request should take effect immediately to prevent any future calls (although most are silent on this point), but one comment recommends that companies be given 30-days to process the request, to allow sellers time to scrub their lists after receiving new opt-outs from third-party telemarketers.[131]

ii. Express Identification of the EBR

A number of the industry comments recommend adding a provision to a safe harbor for prerecorded message calls that would require an indication that the call is based on an EBR.[132] Two comments appear to contemplate only a brief indication that the consumer is a ''customer'' or ''made an inquiry,''[133] one would go further and disclose ''how the [consumer's] phone number was obtained.''[134] Another comment suggests that, in lieu of a mandatory disclosure, this information could be conveyed via a required keypress option that would trigger an explanation of why the consumer is receiving the message.[135]

iii. Call Frequency and Duration Limitations

Several comments indicate that limiting telemarketing to no more than one call a month is regarded, at least by some in the industry, as a ''best practice.''[136] Two comments accordingly recommend adding this limitation to a prerecorded call safe harbor, arguing that such a restriction would ensure that prerecorded calls would not be ''abusive.''[137] They contend that, in combination with a prompt keypress opt-out option designed to prevent prerecorded messages from being ''coercive,'' this additional restriction would prevent prerecorded calls from being either ''coercive or abusive,'' thereby obviating any need or justification for requiring a consumer's express written agreement to receive prerecorded telemarketing calls.

Two comments also suggest that limits on the length of prerecorded messages may be regarded as a ''best practice.'' One indicates that as a ''best practice, not only does it limit contact with its client's customers to once a month, but also limits the average

[118] Although many of the industry proposals refer to IVR technology, *e.g.*, IAC at 3, this term may be a misnomer, to the extent it suggests that such systems are uniformly capable of responding to a consumer's voice commands. While some IVR systems may also have ''Automated Speech Recognition'' (''ASR'') capability that responds to a consumer's spoken words—the direction in which the technology appears to be evolving, *e.g.,* Voxeo at 6; Interactions at 1—many comments appear to use the term to describe a system limited to accepting a consumer's telephone keypad input to select a desired option.

[119] *E.g.*, DMA at 1; cccInteractive (Johnson, CJ), No. 159, at 1; Call Command at 4; NNA at 1–2, 6; IAA at 11; VMBC at 2; MP at 2; Xpedite at 2; Voxeo at 6; Zucker, No. 164, at 1. One comment suggests specifying that the opt-out disclosure be delivered within the first 20 seconds of the message. IAC at 7.

[120] Soundbite at 13; *see* IAC at 7.

[121] DMA at 3; IAA at 2; Superior at 2. Three comments note that voice recognition systems exist that can provide equally convenient opt-out functionality for users of rotary dial telephones. Voxeo at 6 & n.6.; Soundbite at 6 & n.15; Schwartz, No. 640, at 4. It is not clear, however, that these advanced systems are widely in use. *See* IAC at 7 (suggesting that a toll-free number be provided for users of rotary phones); *cf.* Global at 3 (suggesting a toll-free number for messages left on answering machines).

[122] Career at 2; MinutePoll at 1.

[123] Soundbite at 8. One telemarketer mentions that its prompt opt-out disclosure includes both a keypress option and a toll-free number (for consumers who receive the prerecorded message on their answering machines) that connects to the same automated system used for the keypress opt-out. SmartReply at 5.

[124] Soundbite at 13–14.

[125] For example, one comment recommends that a uniform opt-out keypress be required, such as two presses on the ''6'' key (which would spell ''NO'' on the keypad, so that the FTC could advise consumers to ''Just Press 'NO'''). Soundbite at 14. Other comments indicate, however, that different systems may be limited to the use of a single specific key for opt-out requests. *E.g.*, Global at 11(''7'' key); MinutePoll at 4 (''9'' key); IAC at 3 n.2 (''1'' key).

[126] DMA at 2; Soundbite at 13 (so consumers can be assured that opt-out is ''easy and effective''); Voxeo at 7; Global at 3; Xpedite at 3.

[127] IAC at 7 (noting that permissible hold times while waiting for an operator could be limited by the safe harbor).

[128] MinutePoll at 8.

[129] Soundbite at 13.

[130] IAC at 7.

[131] IAC at 3 nn.2–3. However, interactive technology apparently exists that allows telemarketers to automatically scrub call lists against recent additions to a seller's company-specific do not call list. *See* Global at 12.

[132] DMA at 1, 3; MinutePoll at 2; MP at 1; SmartReply at 5.

[133] DMA at 3; MinutePoll at 2 (''briefly identify the nature of the EBR'')

[134] MP at 1.

[135] SmartReply at 5.

[136] SmartReply at 7; *see* IAC at 3; Career at 1; MinutePoll at 1.

[137] MinutePoll at 1; Career at 1. *See* IAC at 6 (suggesting that the Commission could consider this or other limitations on the frequency of prerecorded calls).

message length to ''about 37 seconds.''[138] Another proposes that the FTC consider such a limitation, and suggests that it be 45 seconds.[139]

iv. EBR Limitations

Other industry comments propose one or more additional requirements that would restrict the scope of an EBR for prerecorded calls in answer to consumer objections about ''calls from sellers that use a one-time, insignificant purchase, or even a mere inquiry, as a license to bombard the consumer with solicitations relating to all aspects of the seller's business.''[140] Several suggest imposing restrictions on the source of the telephone numbers to which prerecorded calls may be placed.[141] Others advocate that the Commission consider limitations on the number of transactions between the seller and customer to confine the EBR to businesses with which consumers have regular dealings, or from which they would reasonably expect a follow-up to an inquiry or purchase.[142] Two comments also recommend that consideration be given to shortening the 18-month time period in the current EBR definition to 12 months for prerecorded calls.[143] Two other comments suggest that EBR-based prerecorded message calls might be limited to those that are made in response to prior purchases or existing contracts.[144] Finally, one additional comment asks the FTC to consider modifying the National Do Not Call Registry to permit consumers to opt out of all calls from businesses with which they have an EBR,[145] while another advocates a segregation of company-specific opt-out lists that would require consumers to opt out separately from prerecorded calls and live calls, so that businesses could continue to make live calls to EBR customers who only opt out of prerecorded calls.[146]

*C. Discussion and Analysis of the Safe Harbor Modification Proposals*

The question the Commission must consider in determining whether to adopt a revised safe harbor with any of the modifications proposed by the industry comments is whether such a safe harbor would serve the public policy interests articulated in the Telemarketing Act. In making that assessment, the Commission continues to employ the same analytical framework used in considering the prior prerecorded call safe harbor proposal:[147]

> [T]he Commission's analysis begins from the premise that a new safe harbor that treats prerecorded telemarketing calls to established customers differently from other prerecorded calls might be appropriate if: (1) The consumer aversion to prerecorded calls (which led to enactment of the TCPA ban on such calls) does not apply when such calls are made to established customers; (2) any harm to consumer privacy is outweighed by the value of prerecorded calls to established customers; or (3) there is something unique about the relationship between sellers and their established customers that gives sellers a sufficient incentive to self-regulate so that they would avoid prerecorded telemarketing campaigns that their customers would consider abusive.[148]

1. Are Consumers Averse to EBR-Based Prerecorded Messages?

We begin, therefore, with the first question for analysis: whether consumer aversion to prerecorded calls does not apply when the calls are made to EBR customers. As the Commission previously stated, if consumers have little or no aversion to prerecorded calls to EBR customers, the fact that such calls avoid the twin harms of ''hangups'' and ''dead air'' would weigh heavily in favor of the adoption of a new safe harbor.[149]

Almost all of the few consumer comments in the record that favored the prior safe harbor proposal for prerecorded calls confined their support for such calls to informational messages,[150] while the industry in effect took the position that the need for such informational messages required blanket approval of prerecorded telemarketing messages to EBR customers without an interactive opt-out mechanism.[151] The Commission therefore took pains to point out that purely informational messages are not ''telemarketing'' messages covered by the TSR.[152]

However, as previously noted, the comments opposing the proposed amendment now emphasize for the first time that the exclusion of purely informational reminder messages from TSR coverage still leaves many convenient prerecorded messages covered by the definition of ''telemarketing,'' because they are both informational and involve a direct or indirect solicitation.[153] Several industry comments argue that a safe harbor for prerecorded telemarketing messages with an interactive opt-out is necessary for businesses to provide these convenient messages to consumers who wish to receive them.

Industry commenters argue, moreover, that many of the consumer comments that oppose prerecorded calls should be discounted because they do not specifically state their opposition to prerecorded calls with the various interactive opt-out options that industry members now advocate. The industry would have the Commission parse out the more than 13,000 consumer comments, and ignore those which object to non-interactive prerecorded

[138] SmartReply at 7; *but cf.* SmartReply Study at 7 (survey results noting that SmartReply recommends a 17 second message); *but see* CenterPost at 2 (reporting an ''average call length of over one minute'').

[139] IAC at 7; *but see* Global at 19–20 (showing message lengths of from 33 to 93 seconds).

[140] Voxeo at 7–8.

[141] VMBC at 2 (allowing prerecorded messages only to consumers who provide the seller with their contact information); Soundbite at 15–16 (allowing messages only where the seller obtains the consumer's number directly from the consumer, and prohibiting calls where the consumer's number is obtained from a directory, another company, or some other source); Chrysalis Software, Inc. (Ramsey, Greg), No. 79 (prohibiting use of purchased lists); Global at 9 (prohibiting calls to numbers collected in promotional or prize drawings, or obtained from affiliated companies); Valley at 1 (disallowing sale of customer lists to affiliate parties).

[142] IAC at 6 (suggesting that the EBR be limited to allow calls only to consumers who have purchased, rented or leased goods or services on two or more occasions within an 18 month period); Voxeo at 4 (proposing that EBR calls only be permitted if the consumer has engaged in ''a series of regular transactions'' with the seller or if the calls ''directly pertain'' to a prior transaction).

[143] SmartReply at 43 (noting that ''[i]n general, our clients only call customers that have transacted in the prior 12 months'' because messages ''lose relevance'' after that time, and that ''some states require a 6 month EBR.'' *Id.* at 11); IAC at 6; *but see* DMA at 3–4 (the same EBR parameters should exist for both live and prerecorded calls).

[144] VMBC at 1 (''a previous purchase or service agreement''); IAA at 11 (''contract renewals'' and ''proposed changes to existing contracts to address post-contract events and/or changed circumstances'').

[145] Call Command at 2 (suggesting that consumers who exercise this option could then consent to receive any EBR calls they wanted). Unfortunately, the significant cost of any such alteration to the Registry precludes that possibility.

[146] The Heritage Co. (''Heritage''), No. 581, at 3.

[147] None of the comments in the current round questions the Commission's analytical approach in evaluating the prior safe harbor proposal for prerecorded calls.

[148] 71 FR at 58723.

[149] *Id.* Some of the industry comments contend that the proposed amendment improperly treats prerecorded calls as ''abandoned,'' arguing that they are not ''abandoned'' because a message is delivered within two seconds of a live answer. Beautyrock at 1; Superior at 1; Verizon, Attach. A, at 5. However, these objections ignore the text of the prohibition, which defines a call as ''abandoned'' whenever ''a person answers it and the telemarketer *does not connect the call to a sales representative* within two (2) seconds of the person's completed greeting.'' 16 CFR 310.4(b)(iv) (emphasis added).

[150] 71 FR at 58720 & n.53.

[151] *See* 71 FR at 58719 & n.29.

[152] 71 FR at 58725.

[153] One consumer expresses concern that the industry may turn to the use of ''informational'' messages that include an option of ''finding out more'' about a sales offer. Hubbard, No. 115. Such calls would be covered by the TSR as ''telemarketing'' calls.

message blasting, those which object to receiving any telemarketing calls at all (including prerecorded calls), those which object to the breadth of the EBR definition, and those which object to violations of the TSR.

The industry comments appear to recognize, however, that the majority of consumer comments that oppose prerecorded calls cannot be placed into any of these categories because they do not provide sufficient information to permit such a classification. The industry presumes, instead, that because prerecorded messages with interactive opt-outs were not widely used at the time of the prior comment period, the comments from consumers at that time could not have been addressing them. For that reason, the industry contends that the majority of consumer comments that cannot be categorized could not have been objecting to prerecorded messages with an interactive opt-out, and should be disregarded.

The industry's critique of the consumer comments ignores the fact that a few prerecorded call telemarketers had been using interactive opt-out technology that consumers may have experienced before the Commission requested public comment on a prerecorded message safe harbor. Industry's advocacy also overlooks the clear majority of the most recent consumer comments that specifically object to receiving prerecorded calls with an interactive opt-out mechanism. Further, industry neglects to account for a fact not previously placed on the record—that the purportedly quick and easy opt-out provided by an interactive mechanism at most may be accessible by no more than 15 to 20 percent of the consumers who receive prerecorded messages, because at least 80 to 85 percent of these messages end up on consumers' answering machines, where consumers are powerless to avoid the greater burden of calling the seller in an effort to be placed on an entity-specific opt-out list.[154]

The Commission noted, when it denied the request for a safe harbor for prerecorded messages delivered to EBR customers, that the consumer comments in the record provided ''compelling evidence that consumer aversion to prerecorded message telemarketing—regardless of whether an established business relationship exists—has not diminished since enactment of the TCPA, which, in no small measure, was prompted by consumer outrage about the use of prerecorded messages.''[155] The Commission would therefore be hard pressed to ignore the scope and force of that consumer opposition to prerecorded telemarketing messages now—as the industry analysis does—absent compelling evidence that consumers affirmatively support and accept such messages when they provide an interactive opt-out mechanism. The consumer surveys and opt-out rate data submitted by the industry fall short in providing such evidence.

The Minutepoll survey shows that when asked in the abstract, 70 percent of the respondents said that they prefer live telemarketing calls, and only 30 percent said they prefer prerecorded calls.[156] Both the Minutepoll and Forrester surveys purport to show, however, that consumers really prefer prerecorded calls to live calls. For example, Minutepoll reports that when given a choice between a prerecorded call with a ''quick option to get on the calling company's Do Not Call list'' and a ''live operator call that would not be required to do this,'' 68 percent of the respondents said they preferred prerecorded calls and only 32 percent said they preferred live calls.[157] There is reason to doubt, however, that the surveys actually show that consumers affirmatively want to receive prerecorded sales calls. Of the 68 percent of consumers in the more in-depth MinutePoll survey who said they would prefer a prerecorded message with a ''quick DNC opt-out,'' 33 percent directly attributed that choice to their ability to stop future calls and 16 percent to their ability to hang up easier or without guilt. Thus, when forced to choose between an opt-out option with prerecorded calls and no such option with live calls, 33 percent of those who said they prefer prerecorded calls may have been misled by the survey to believe that accepting a prerecorded call was the only way to stop such calls and another 16 percent did not want to listen to the call at all.[158] Thus, neither the Minutepoll nor Forrester results convincingly demonstrate that consumers want prerecorded calls.

The Silverlink Survey appears to confirm what the other two surveys suggest—that at best a comparatively small minority of consumers affirmatively appreciate receiving prerecorded telemarketing calls.[159] More importantly, the Silverlink Survey, which was submitted to show greater consumer acceptance of prerecorded healthcare messages than of other telemarketing messages, demonstrates that consumer acceptance of prerecorded messages varies dramatically depending on the subject matter of the message. By overwhelming margins, survey participants said they would be unwilling to listen to a prerecorded credit card offer at discounted rates (91 percent) or an offer of discounted vacation travel packages (87 percent), whereas only 41 percent said they would be unwilling to listen to a healthcare-related prerecorded telemarketing call.[160]

Thus, far from providing compelling evidence of consumer acceptance of prerecorded telemarketing messages with an interactive opt-out option, the industry surveys manifest widespread consumer disaffection with such calls. With these surveys as background, the other evidence proffered by the industry to show consumer approval of prerecorded messages—opt-out rates and consumer actions in response to prerecorded messages—is not only indirect, but singularly unpersuasive.

As previously noted, most of the industry claims about low opt-out rates fail to provide sufficient information for an assessment of the claims, either because they combined rates for calls that had an interactive opt-out with those that did not, based the rate on

[154] *See* note 246, *infra*, and accompanying text. Although one industry member states that consumers who receive prerecorded messages on their answering machines and call the toll-free number provided are connected to the same automated opt-out mechanism as those who answer a call, none of the other industry comments indicates that the opt-out mechanism for recipients of answering machine messages would be equally convenient. *See* note 123, *supra,* and accompanying text.

[155] 71 FR at 58723.

[156] *See* note 81, *supra*, and accompanying text. The Commission notes that, by asking whether consumers would rather receive prerecorded message calls or calls from a sales agent, both the MinutePoll and Forester surveys may have led survey respondents to presume that they were being asked to choose between an equal number of prerecorded calls and sales agent calls. The choices of those who said they would prefer prerecorded calls might have changed if they understood they could receive a greater number of pre-recorded calls than sales agent calls.

[157] *See* note 82, *supra,* and accompanying text; *cf.* note 85, *supra*, and accompanying text (Forrester data).

[158] MinutePoll, Exh. A, at 2. Similarly, of the 30 percent of consumers who initially said they preferred prerecorded calls when asked ''in the abstract,'' more than half (54 percent) said the reason for this preference was that they could easily hang up on the prerecorded calls. This might indicate that at most 15 percent of the survey respondents may actually have wished to receive prerecorded calls. *Id.*

[159] It is noteworthy that 78 percent of the Silverlink Survey participants reported that they actually received an automated call within the preceding 12 months. Silverlink Survey, Attach. A at 2.

[160] Silverlink Survey at 5 & n.14. The fact that as many as 41 percent of the survey participants said they would be unwilling to listen to healthcare-related messages indicates that the high satisfaction rates (89–94 percent) reported in the CenterPost surveys can best be attributed to the fact that only customers who responded to the prerecorded call were surveyed.

calls that deferred the opt-out information until the end of the call, or failed to indicate whether the rate calculation was based only on calls that were actually answered.[161] The two that did provide sufficient information are exceptional cases, with one providing prerecorded calls offering casino discount promotions and the other notifying customers of special sales at ''Fortune 500'' retailers.[162] In contrast to the low rates cited in the industry comments, the Commission's law enforcement investigations suggest that interactive opt-out rates for prerecorded telemarketing calls correctly calculated as a percentage of the calls actually answered may range from 10 to 20 percent. The likely reason for the apparently low opt-out rates reported by the industry is that the great majority of consumers probably hang up on prerecorded calls without waiting for information on how to opt out.[163]

The fundamental problem with opt-out rates and other indirect measures of consumer acceptance of prerecorded calls is that consumers who do not wish to be bothered by prerecorded telemarketing messages, if they do not simply answer and hang up, may let the message roll over to an answering machine where they can delete it later.[164] The SmartReply study reporting that consumers are 300 percent less likely to call a toll-free number to opt out in response to an answering machine message than to use an interactive opt-out mechanism suggests that consumers are quite averse to non-interactive opt-out mechanisms.[165] It appears more than likely that the percentage who bother to assert an entity-specific opt-out is a small percentage of those who dislike prerecorded telemarketing messages. Similarly, while there is some evidence in the record that consumers who answer prerecorded message calls and listen to them actually make purchases, particularly of healthcare products,[166] this may occur only in a relatively small percentage of the prerecorded calls that are made.[167]

After a careful review of the record in its entirety, it is the Commission's considered opinion that the evidence shows that a substantial majority of consumers dislike telemarketing calls that deliver prerecorded messages, with or without an EBR or even an interactive opt-out mechanism, but that a comparatively small minority of consumers may, in fact, appreciate the convenience of EBR-based prerecorded calls when they provide an interactive opt-out mechanism, at least in some circumstances.[168] While a precise percentage cannot be determined from the information in the record, the record evidence suggests that at least 65 to 85 percent of consumers do not wish to receive prerecorded telemarketing calls.[169] In fact, these percentages would likely have been higher, perhaps significantly higher, if the MinutePoll survey had given participants the choice of receiving **no** prerecorded calls without their consent. Consequently, the first potential rationale for creating a new safe harbor for interactive prerecorded telemarketing calls is not supported by the record.

2. Is Harm to Privacy Outweighed by the Value of Prerecorded Calls?

The entire record in this proceeding is clear that an overwhelming number of consumers hate prerecorded calls, and consider them a gross invasion of their privacy at home. Although the record also now contains some limited evidence of consumer willingness to accept some telemarketing calls that deliver a prerecorded message and include an interactive opt-out mechanism, only a small minority of consumers say they want to receive such calls.[170] There is clear consumer support in the record for prerecorded informational messages that are not prohibited by the TSR—*i.e.*, messages that do not include a sales pitch or information about how to make a purchase. In contrast, there is scant consumer support for interactive prerecorded telemarketing messages that combine an informational component and a sales component, or provide only a sales pitch.

The relatively few consumers who want to receive interactive prerecorded telemarketing messages primarily say they value such messages because they find them a ''useful'' convenience in their busy lives, or because they regard them as less invasive than live conversations with a telemarketer. The greater majority who object to prerecorded telemarketing messages in general, or to interactive messages in particular, consider them an intrusive and disruptive invasion of their privacy at home that amounts to harassment.

Any argument that the harm of an invasion of privacy is outweighed by the value of prerecorded telemarketing messages as a ''useful'' convenience, or their value as a means of avoiding the possible discomfort of conversing with a telemarketer, would be untenable unless the privacy invasion were relatively minor. For the great majority of consumers, however, the ringing of the telephone is anything but a minor invasion of the privacy of their homes, particularly when the call they answer converts a two-way instrument of communication into a one-way broadcast of a prerecorded advertisement, even if that broadcast has some interactive features.

The Commission is satisfied that there is nothing new in the record that would warrant a different conclusion on this issue than it reached before in denying the VMBC request for a safe harbor for prerecorded messages with an interactive opt-out mechanism. The fact that the record now includes evidence that some consumers would find interactive prerecorded messages useful does not outweigh the significant harm to the privacy interests of consumers, as attested by the great majority of consumer comments in the record and by the survey data submitted. This argues for choice in this matter—to allow those consumers who want such calls to consent to receive them, while protecting the large majority who deplore them from having to receive and opt out, one by one, from each seller's

[161] *See* note 90, *supra*, and accompanying text.

[162] *See* note 91, *supra*. The brevity of the messages in the SmartReply study also may have contributed to the unusually low opt-out rates reported.

[163] *See* note 52, *supra*, and accompanying text.

[164] Only three percent of the customers in the SmartReply study answered the phone and listened to some or all of each of eight monthly calls. *See* note 92, *supra.*

[165] *See* note 92, *supra.*

[166] *See* note 95, *supra*, and accompanying text.

[167] None of the industry comments provides data showing both the number of prerecorded calls made and the number of sales resulting from those calls.

[168] At least three consumers opposed to the proposed amendment say that prerecorded messages benefit them because the same offers might get lost or go unread in the volume of junk mail they receive. Knoll, No. 162; Kelly, No. 457; DeSimone, No. 161; *see* Harvey, No. 186; *cf.* Beebe, No. 62. Other consumers equate prerecorded messages with the junk mail and spam they receive and believe that the volume of prerecorded calls will grow overwhelming unless restrictions are placed on such calls. *See* Wallace, No. 375 (gets ''way too much junk mail also''); Brady, No. 569 (already gets ''more than enough. . . junk mail and internet spam''); Leach, No. 311 (gets ''so much junk mail everyday, isn't that enough?'').

[169] *See* notes 156–158 , *supra,* and accompanying text. Although the 2005 AARP survey similarly indicated that 84 percent of sampled consumers with numbers on the Registry considered telemarketing calls ''irritating'' or invasive of ''my privacy,'' *see* note 35, *supra*, the Commission does not rely on that survey because it inquired about all ''telemarketing'' calls, not just prerecorded calls.

[170] *See* note 53, *supra* (2 percent of consumer comments oppose a written agreement requirement). If the previous consumer comments did not think to object specifically to calls from businesses with which the consumer has an EBR, *see* note 56, *supra*, and accompanying text, that oversight is hardly a reliable indication that the commenters would welcome EBR calls in some circumstances, as an industry comment asserts. *See* note 57, *supra*, and accompanying text.

call list. Thus, the second potential rationale for adoption of a safe harbor for interactive prerecorded telemarketing calls is not supported by the record. That fact, as the Commission previously noted, ''assumes particular importance in view of Supreme Court precedent that has long recognized the significant governmental interest in protecting residential privacy.''[171]

The Commission emphasizes that this conclusion is by no means solely the result of the relative percentages of consumers who say they oppose or support prerecorded telemarketing messages, or who do or do not perceive that their privacy at home is harmed by receiving them. The conclusion is influenced in no small part by the considerable value Congress clearly attached to preserving the privacy of citizens in their homes when it enacted the Telemarketing Act, and specifically directed the Commission to ''include in [the TSR] a requirement that telemarketers may not undertake a pattern of unsolicited telephone calls which the reasonable consumer would consider coercive or abusive of such consumer's right to privacy.''[172]

3. Do Sellers Have a Strong Incentive to Avoid Abuses?

The third potential rationale for creation of a new safe harbor as indicated in the NPRM is that sellers might self-regulate the number of prerecorded messages they send in order to preserve the goodwill of established customers. The Commission determined that this consideration could not support such a safe harbor. Some industry comments submitted in response to the NPRM challenge this determination, but not persuasively. The Commission previously concluded that: (1) While well-established businesses with brand or name recognition may have incentives to exercise restraint, the same is not necessarily true for new entrants or small businesses in highly competitive markets; (2) A safe harbor for prerecorded calls would expose consumers to prerecorded calls from every seller from whom they had made a single purchase within the past 18 months; (3) Sellers would have less incentive to exercise self-restraint with respect to customers who make inquiries, because they would have no existing customers to lose, but only customers to gain; (4) The likelihood that industry-wide self-restraint would be effective requires consideration of the industry's record of compliance; (5) Although overall compliance is quite good, not all covered entities are complying, and that fact presents a particular problem with respect to consumer concerns about the breadth of the industry's interpretation of what constitutes an EBR; and (6) The significantly lower cost of prerecorded telemarketing calls, compared to live calls, will create economic incentives to increase the number of prerecorded telemarketing calls consumers receive in their homes.[173]

Some in the industry assert that the Commission gave ''inadequate consideration'' to the argument that sellers have strong incentives to avoid alienating existing customers, 80 percent of whose telephone numbers may be listed on the Registry. These comments argue that because the availability of an interactive opt-out mechanism could easily lead to the loss of the right to contact many EBR customers by telephone, sellers would exercise caution in using prerecorded messages.[174] The Commission believes it did give appropriate weight to these considerations, however, when it explicitly acknowledged that sellers with brand or name recognition may have sufficient incentives to exercise restraint in placing prerecorded telemarketing calls to their customers.[175]

Some industry comments further criticize the Commission's concern about whether new entrants and small businesses in highly competitive markets would have sufficient incentives to exercise the same self-restraint, contending that they share the same incentives and are less likely than established businesses to use prerecorded telemarketing calls.[176] This criticism ignores the powerful economic incentives for new entrants and small businesses to seek to grow their businesses. The Commission considers it noteworthy that none of the industry comments challenged its conclusion that sellers would have less incentive to exercise self-restraint with respect to consumers who make an inquiry that creates an EBR, and thus are potential customers, rather than existing customers.[177]

Based on the entire record and its enforcement experience, three considerations lead the Commission to conclude that, if anything, it may have overestimated the incentives for industry self-restraint in the use of prerecorded telemarketing messages. First, any such self-restraint is called into question by the more than 100 consumer complaints a month that the Commission has been receiving about prerecorded telemarketing calls—the fifth highest number of all TSR violation complaints.[178] Second, the Commission's recent law enforcement investigations and cases provide evidence that millions of prerecorded calls are being made to numbers on the Registry, and that many of these calls are abandoned if a consumer answers the telephone.[179] Third, two facts about which the Commission was not previously aware—an industry analysis showing that consumers are 300 percent less likely to opt out from an answering machine message that provides a toll-free number than from a prerecorded call that has an interactive opt-out mechanism,[180] and industry reports that between 80 and 85 percent of prerecorded messages end up on answering machines[181]—suggest that sellers may have little reason to be overly concerned about losing EBR customers from too frequent use of prerecorded telemarketing messages since most consumers do not bother to call back to opt out after retrieving such messages. This data also suggests that the relatively low opt-out rates reported in the industry comments may be more a function of the relatively small percentage of such calls answered by a

[171] 71 FR at 58723.

[172] 15 USC 6102(a)(3)(A). This directive appears consistent with the previously expressed intent of Congress, as stated in the preamble to the TCPA, that ''banning . . . automated or prerecorded telephone calls to the home, except when the receiving party consents to receiving the call . . . is the only effective means of protecting telephone consumers from this nuisance and privacy invasion.'' TCPA, Pub. L. No. 102—243, 105 Stat. 2394 (1991) at § 2(12).

[173] 71 FR at 58723–24.

[174] *See* note 107, *supra*, and accompanying text.

[175] 71 FR at 58723.

[176] *See* note 107, *supra*.

[177] 71 FR at 58723–24.

[178] Consumers filed more than 1200 complaints about prerecorded calls with the Commission from January 1 through December 31, 2007.

[179] *E.g., FTC v. Voice-Mail Broad. Corp.*, No. 2:08-cv-00521 (C.D. Cal. Feb. 8, 2008) ($3 million civil penalty for failing to comply with the FTC's enforcement forbearance policy in delivering prerecorded messages; *i.e.*, abandoning over 46 million calls, that provided no opt-out option to consumers who answered); *United States v. Guardian Commc'n., Inc.*, No. 4:07–04070 (C.D. Ill. Nov. 15, 2007) ($7.8 million civil penalty for automated prerecorded message blasting to up to 20 million numbers a day, many of which were placed to numbers on the Registry, and for abandoning calls answered by a person); *United States v. Craftmatic Indus., Inc.*, No. 07–4652 (E.D. Pa. Nov. 8, 2007) ($4.4 million civil penalty for hundreds of thousands of calls to numbers on the Registry and for abandoning millions of calls); Global Mort. Funding, Inc., No. 07–1275 (C.D. Cal. filed Oct. 30, 2007) (complaint alleging hundreds of thousands of calls to numbers on the Registry, and abandoning many calls answered by a consumer). *See also* note 15, *supra*.

[180] *See* note 92, *supra*.

[181] *See* note 246, *infra*, and accompanying text.

consumer rather than an answering machine. Thus, the supposed incentive for industry self-restraint created by the availability of an interactive opt-out mechanism is liable to be less effective than it previously appeared.[182]

A number of comments also object to the Commission's consideration of the industry's record of compliance with the TSR in assessing the likelihood that industry-wide self-restraint would be effective. They argue, in essence, that it is unfair to judge industry members who try to comply with the law by the actions of bad actors who are unlikely to comply with any TSR requirement unless brought to account by law enforcement action.[183] This argument would have greater force were it not for the fact that, as some in the industry have privately acknowledged, a few industry submissions show,[184] and the Commission's law enforcement experience demonstrates,[185] it was not until late in 2006 that many finally began to comply with a key requirement of the enforcement forbearance policy for prerecorded calls announced by the Commission in November 2004, by telling consumers how to opt out at the outset of the call, rather than at the end of the message.[186] The Commission's consideration of this issue has focused more narrowly, however, on the fact that the industry compliance record presents a particular problem with respect to consumer concerns about the breadth of the industry's interpretation of what constitutes an EBR, as the consumer comments and the Commission's enforcement experience have indicated.[187]

Finally, the industry challenges consumer and Commission concerns that industry-wide self-restraint would be unlikely to prevent an increase in prerecorded telemarketing calls as ''speculative'' and ''not supported by the record,'' notwithstanding an industry comment acknowledging that such an increase is ''theoretically possible.''[188] Even if it is true, as industry comments argue,[189] that VoIP is unlikely to reduce call transmission costs much below current long-distance rates for high volume users, industry cannot (and does not) dispute that prerecorded message telemarketing is significantly less expensive for sellers than live telemarketing conducted by sales agents. While any forecast of likely future events may be unavoidably ''speculative'' to some degree, it is only reasonable to expect that the prospect of labor cost savings would increasingly lead sellers to convert as much live telemarketing as possible to prerecorded calls.

Because the record does not provide persuasive support for any of the three potential justifications for according special treatment to interactive prerecorded telemarketing calls to EBR customers, there is no justification for creation of a safe harbor for such calls. Accordingly, the Commission has decided not to reconsider its previous denial of the VMBC request for a safe harbor.

*D. The Proposed Amendment*

As discussed earlier in this notice, the October 2006 NPRM proposed and sought public comment on an amendment to the TSR that would permit prerecorded telemarketing calls only to consumers who provided their express written agreement to receive them.[190] This proposal was based in large measure on the extensive record of strenuous consumer opposition to the VMBC request for a safe harbor for prerecorded calls. In proposing the amendment to make explicit the prohibition of calls delivering prerecorded telemarketing messages when answered by a consumer that is implicit in the TSR's call abandonment prohibition,[191] the Commission emphasized that the Telemarketing Act directs the FTC ''to include in [the TSR] a requirement that telemarketers may not undertake a pattern of unsolicited telephone calls which the reasonable consumer would consider coercive or abusive of such consumer's right to privacy.''[192] The Commission further concluded that ''the present record supports a finding that a reasonable consumer would consider prerecorded telemarketing calls coercive or abusive of such consumer's right to privacy,''[193] but specifically requested public comment on that issue.[194]

1. Discussion and Analysis of the Proposed Amendment

Consumers find non-interactive prerecorded calls abusive because they are powerless to interact with a recording.[195] For this reason, most of the industry comments apparently accept that a reasonable consumer would consider non-interactive telemarketing message calls ''coercive or abusive of such consumer's right to privacy.''

The industry comments strongly contest, however, the Commission's authority to prohibit the delivery of prerecorded telemarketing messages that provide an *interactive* opt-out mechanism without a consumer's prior written agreement to receive them. They primarily argue that interactive messages are significantly different from non-interactive messages because consumers are not ''powerless'' to prevent privacy abuses from prerecorded message calls that provide an interactive opt-out mechanism. The industry comments therefore contend that it would be unreasonable for consumers to consider such messages abusive of their privacy.

[182] The annual 33 to 50 percent customer attrition experienced by retailers, SmartReply at 41, would appear to provide a strong incentive to use prerecorded calls to make sales before the attrition occurs, whereas opt-out rates are so low as to provide little incentive for self restraint.

[183] *See* Charles Duhigg, *Bilking the Elderly with a Corporate Assist*, N.Y. Times, May 20, 2007, at A–1 (reporting that, since the start of 2006, ''federal agencies have filed lawsuits or injunctions against at least 68 telemarketing companies and individuals accused of stealing more than $622 million'').

[184] Message at 2–3 (message scripts with opt-out at end of call); Draper's and Damon's (message script with opt-out at end of call).

[185] *FTC v. Voice-Mail Broad. Corp.*, No. 2:08-cv-00521 (C.D. Cal. Feb. 8, 2008) ($3 million civil penalty, with all but $180,000 suspended due to inability to pay, for law violations including failure to provide consumers who answered prerecorded calls with an opportunity, at the outset of the message, to opt out). This violation was somewhat surprising since it was VMBC that first advocated a safe harbor for prerecorded messages with an interactive opt-out opportunity at the outset of the message.

[186] 69 FR at 67290 (requiring, *inter alia*, a disclosure of the opt-out mechanism provided at the *outset* of a prerecorded call) (emphasis added). The argument would also be more compelling if the record did not include consumer complaints about prerecorded calls from well-established businesses with brand or name recognition. *See* notes 19–21, *supra,* and accompanying text.

[187] 71 FR at 58724 & n.91, *citing United States v. Columbia House Co.*, No. 05C—4064 (N.D. Ill. filed July 14, 2005) ($300,000 civil penalty settlement for alleged calls to tens of thousands of numbers on the Registry to consumers who last made a purchase from the defendant far outside the prior 18-month period during which the EBR exemption would have applied). The Commission has no reason to believe that narrowing the EBR definition would succeed in protecting consumer privacy, and would eliminate the problems addressed by the proposed amendment. Such an approach would have the undesirable effect of reducing the ability of businesses to communicate with their EBR customers with live calls.

[188] *See* note 106, *supra*, and accompanying text. The Commission is not persuaded that it should ignore the basic economic principles which led to its concern, and rely instead on vague industry assurances, based on anecdotal evidence, that prerecorded calls ''are most useful in specific, targeted applications'' to conclude that an increase in prerecorded calls would not occur if a safe harbor were created.

[189] *See* note 108, *supra*, and accompanying text.

[190] 71 FR at 58726–27.

[191] 16 CFR 310.4(b)(1)(iv) (prohibiting call abandonment, and defining call abandonment as a failure to connect a call to a sales representative within two seconds of the completed greeting of the person who answers).

[192] 71 FR at 58726.

[193] *Id.*

[194] 71 FR at 58733.

[195] 71 FR at 58723.

The Commission does not find this argument persuasive. As the Commission noted when it amended the TSR to establish the Registry, ''the company-specific approach is seriously inadequate to protect consumers' privacy,'' not only from calls from a single telemarketer, but especially when the volume of telemarketing calls from multiple sources is so great that ''consumers find even an initial call from a telemarketer or seller to be abusive and invasive of privacy.''[196] Consequently, reasonable consumers may very well experience even telemarketing calls that deliver a prerecorded message but include an interactive entity-specific opt-out as coercive and abusive of their rights to be left alone in their own homes. Such a conclusion might be particularly justified if an overall increase in the number of such calls were anticipated because of their low cost; but it would not be unreasonable even if no such increase were anticipated, given the evidence in the record that interactive opt-out mechanisms do not always work,[197] and can be just as ineffective and burdensome for consumers as the entity-specific opt-out procedures criticized in the Commission's decision to create the Registry.[198]

Second, the industry argues that the record cannot support a finding that interactive prerecorded messages are ''coercive or abusive'' because the consumer comments submitted during the initial comment period in 2004 do not explicitly object to *interactive* messages. For the reasons previously discussed, the Commission finds this argument unpersuasive.[199] In this regard, the most telling evidence in the record is the industry survey results showing that a significant majority of consumers do not want to receive interactive prerecorded messages.[200] Thus, the Commission concludes that the preponderance of the evidence on the record as a whole supports adoption of the proposed amendment.[201]

Having reviewed the entire record, the Commission concludes that the reasonable consumer would consider interactive prerecorded telemarketing messages to be coercive or abusive of such consumer's right to privacy. The mere ringing of the telephone to initiate such a call may be disruptive; the intrusion of such a call on a consumer's right to privacy may be exacerbated immeasurably when there is no human being on the other end of the line. The Commission is inclined to agree that prerecorded telemarketing messages, whether interactive or non-interactive, convert the telephone from an instrument for two-way conversations into a one-way device for transmitting advertisements, as one industry comment notes. The Commission believes that the other narrowly focused industry arguments to the contrary disregard the intrusiveness and disruptiveness of calls delivering prerecorded messages, and seriously underestimate the very high value consumers place on their privacy at home.

In reaching this conclusion, the Commission remains mindful of industry concerns about the impact of this determination, and appreciates the potential consequences for law-abiding industry participants. For this reason—and out of consideration for the minority of consumers who may wish to receive prerecorded messages—the Commission declines to adopt the suggestion of two consumer groups that prerecorded telemarketing calls be banned completely.[202] Also for this reason, the Commission is adopting a number of provisions industry commenters have advocated to mitigate the burden of implementing the amendments the Commission is adopting, as discussed below.

The Commission is also mindful of the legitimate interests of both sellers and consumers in communicating immediately following a sale. The Commission therefore wishes to emphasize that prerecorded messages communicating delivery or service dates or times, and similar information, are informational calls that fall outside the ambit of the TSR's regulation of ''telemarketing.'' Thus, sellers may continue to use prerecorded messages for those purposes without restriction.

Finally, the Commission notes that it is aware that the technology used in making prerecorded messages interactive is rapidly evolving, and that affordable technological advances may eventually permit the widespread use of interactive messages that are essentially indistinguishable from conversing with a human being. Accordingly, nothing in this notice should be interpreted to foreclose the possibility of petitions seeking further amendment of the TSR or exemption from the provisions adopted here.

2. Commenters' Suggestions for Revisions to the Proposal

The public comments on the proposed amendment urge several revisions that the Commission has taken into consideration in refining it. The comments variously advocate: (1) modification of the requirement for a signed, written agreement to give sellers greater flexibility in obtaining consumer consent to receive prerecorded message calls; (2) clarification of what disclosures sellers must make when obtaining a written agreement from a consumer; (3) reconsideration of whether the amendment should apply to messages left on answering machines; and (4) other technical revisions.

a. Suggested Modifications of the ''Written Agreement'' Requirement

Several industry comments request modification of the ''written agreement'' requirement of the proposed amendment to mitigate compliance burdens. Because ''much commerce occurs over the Internet, by phone, and in other simple formats without writing and without a clear signature,''[203] several comments urge the Commission to modify the proposed amendment to give businesses greater flexibility in obtaining the required agreement from consumers to receive prerecorded message calls.[204] Specifically, several ask that the amendment be modified so that the agreement need not be in writing,[205] and so that an old-fashioned,

[196] 68 FR at 4629–30.

[197] *See* Section II.A.4, *supra*.

[198] 68 FR at 4629.

[199] *See* the discussion in Section II.B.1, *supra*.

[200] The Commission notes that the fact that a clear majority of consumers do not want to receive interactive prerecorded telemarketing messages does not necessarily compel a finding that a reasonable consumer would consider such messages ''coercive or abusive,'' any more than the fact that a minority may want to receive such messages would compel the opposite conclusion. The standard is an objective one, which requires the Commission to determine, from the perspective of a ''reasonable consumer,'' whether such a consumer ''would consider'' prerecorded telemarketing messages to be ''coercive or abusive.''

[201] Two additional industry arguments are based on a misunderstanding of the applicable evidentiary standard. According to these arguments, no conclusion can be drawn that reasonable consumers could consider such calls coercive or abusive of their right to privacy absent a study proving that interactive prerecorded message calls are abusive, or because there is a ''subset'' of consumers who say they want to receive such messages. *See* notes 98–99, *supra*, and accompanying text.

[202] AARP at 4; PRC at 5.

[203] DMA at 8; *cf.* Voxeo at 9 (''[W]ith the widespread use of the Internet and other platforms for electronic or long-distance shopping,'' many transactions never leave ''the confines of cyberspace'').

[204] DMA at 8; IAA at 11; IAC at 8; SmartReply at 23, 28 (seeking ''liberalizing'' of ''the definition of express consent'' so that it can be obtained ''with minimal effort and minimal commitment''); Call Command at 5 (requesting ''a less restrictive approach to obtaining a consumer's express consent'').

[205] *E.g.,* DMA at 9; IAA at 11; NNA at 5 (permit ''oral consent''); SmartReply at 28 (no ''burdensome document or contract''); SMG Group, LLC (Grossman, Steven), No. 613 at 1 (''a more reasonable measure would be to require verbal or even electronic consent'').

pen-to-paper signature not be required.[206] Another contends that the amendment should require no more than that the seller or telemarketer ''document a consumer's intent to be called.''[207]

Similarly, a number of comments request clarification that the E–SIGN Act applies not only to the signature requirement of the proposed amendment,[208] but also to the ''written agreement'' requirement.[209] Several comments assert that E–SIGN permits an on-line means via website or email of obtaining a consumer's agreement;[210] a telephone keypress authorization;[211] a recording of oral agreement given during a call;[212] or an oral agreement given during a call with third-party verification.[213] Other comments without reference to E–SIGN urge the Commission to permit a check-box on a return postcard without a signature,[214] an unsigned application on which a consumer provides his or her telephone number,[215] or an in-store disclosure by a consumer of his or her telephone number in response to a sales agent's request.[216]

It is clear from the comments that much of the industry's opposition to the proposed amendment centers on the requirement of a signed, written agreement to receive prerecorded calls, and the presumed cost and paperwork burden such a requirement would entail. The industry comments appear to overlook the fact that the TSR already expressly permits obtaining consumer signatures electronically as permitted by the E–SIGN Act in other provisions requiring signed written agreements from consumers:

> For purposes of this Rule, the term ''signature'' shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.[217]

Because it always has been the Commission's intention to minimize any paperwork cost or burden on businesses by permitting electronic signatures as evidence of compliance with the amendment, the Commission has added an identical footnote to the proposed amendment so that sellers can be assured that written agreements obtained in compliance with E–SIGN will satisfy the requirements of the amendment, such as, for example, agreements obtained via an email or website form, telephone keypress, or voice recording.[218] Any agreement obtained pursuant to E–SIGN must be sufficient to show that the consumer: (1) received clear and conspicuous disclosure of the consequences of providing the requested consent — *i.e.*, that the consumer will receive future calls that deliver prerecorded messages—and (2) having received this information, agrees unambiguously to receive such calls at a telephone number the consumer designates.[219] The seller will have the burden of proof to demonstrate that a clear and conspicuous disclosure has been provided, and an unambiguous consent obtained.[220] The Commission will monitor E–SIGN compliance closely to ensure that consumers' privacy preferences are protected.

The amendment's written agreement and signature elements are essential, however, to ensure that consumers are adequately apprised of the nature of the request and the fact that they will receive prerecorded calls as a consequence of their agreement.[221] Return postcards or applications that are unsigned therefore will not suffice to demonstrate a consumer's agreement to receive prerecorded message calls. For the same reason, a consumer's oral response to an in-store request from a sales clerk for a home telephone contact number would not evidence the consumer's agreement to receive prerecorded calls, nor would an oral response to a sales clerk's express request for the consumer's agreement to receive prerecorded message calls.

Point-of-sale agreements can be obtained electronically on POS devices or on paper, at the seller's option, so long as consumers have a clear choice to receive, or not to receive, prerecorded message calls. Both ''Yes'' and ''No'' check boxes would serve that purpose when placed below a straightforward statement such as: ''I would like to receive telephone calls with prerecorded messages from ABC Co. that provide special sales offers such as _____ at this telephone number: _____.'' Other formulations may serve as well, and although there might be some efficiencies from mandating this language,[222] the Commission believes it preferable to allow industry some flexibility on this point, rather than to prescribe mandatory language.

b. Suggested Disclosure Requirements

A variety of suggestions were advanced as to the potential need for additional disclosures with regard to obtaining a consumer's written agreement. Two industry commenters, correctly noting that sellers will have the burden of proving that they have obtained a consumer's written agreement, urged that the Commission adopt limited disclosure requirements for obtaining the written agreements required by the amendment.[223] One of

[206] *E.g.,* DMA at 9; Schwartz at 5 (contending that the signature requirement is ''too burdensome for businesses to implement and will prevent [use of] interactive telemarketing calls''); *see* IAA at 4–5, 8.

[207] Call Command at 5.

[208] *E.g.*, SmartReply at 33; Countrywide at 2;Vontoo at 2; Voxeo at 9.

[209] Call Command at 6 (''With respect to consents obtained through e-mail and the Internet, it is assumed that the answer is straightforward—*i.e.*, such methods of consent are clearly considered written consents under the Federal E–SIGN Act'').

[210] *Id.*; Voxeo at 9; Call Command at 5–6; DMA at 9; Vontoo at 2; Third Party Verification, Inc. (''Verification''), No. 134, at 1; Draper's at 1; Booking Angel (McEvoy, Dean), No. 121, at 1; Healthcare Technology Systems (Mundt), No. 103 at 1; Zucker at 2. A few consumers who oppose the amendment agree. *E.g.,* Eapen, No. 57; Kaushik, No. 48; Shimko, No. 502.

[211] Countrywide at 2; Global at 11; Call Command at 5; SmartReply at 15; *see also, e.g.,* Brockbank, No. 96; Maruca, No. 602 ; Rosato, No. 156.

[212] DMA at 9 ; Career at 2; Call Command at 5, 6; NAA at 7 (noting that Sections 310.3(a)(3) and 310.4(a)(6) of the TSR already permit oral consent in different contexts); NNA at 5; NAA at 6; MinutePoll at 9.

[213] Verification at 1.

[214] DMA at 9.

[215] Call Command at 5; SmartReply at 15.

[216] SmartReply at 15 (with store signage disclosing the purpose of the telephone number request or an oral disclosure read from a point of sale system screen by a sales associate).

[217] 16 CFR 310.3(a)(3)(i) n.5 and 310.4(b)(1)(iii)(B)(i) n.6.

[218] The E–SIGN Act defines an ''electronic signature'' as ''an electronic sound, symbol, or process attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record.'' 15 USC 7006(5). The Act further defines an ''electronic record'' as ''a contract or other record created, generated, sent, communicated, received, or stored by electronic means.'' 15 USC 7006(4).

[219] Thus, if a seller wishes to capture a consumer's telephone number via automated number identification (''ANI''), the consumer must have an opportunity to authorize calls to a number that is different from the number used to consent to receipt of prerecorded calls.

[220] Thus, disclosures hidden in lengthy end user license agreements or on the back of printed forms will not pass muster.

[221] Obtaining the required agreement need not prolong a conversation with a telephone sales agent, and either could precede or follow the conversation using an automated request and an interactive voice or keypress mechanism to document the response. *See* IAC at 9 n.17. In an incoming call, the request could be made during the ''hold'' time before the call is transferred to an agent. If no sales agent is immediately available, the amendment would not prevent a consumer from leaving a message or otherwise agreeing to receive a one-time automated return call when an agent ultimately becomes available. *See* Eckert, No. 90.

[222] *See* Dunlop, No. 118, at 1 (suggesting that the Commission prescribe ''explicit sample waiver language'' that would not only help sellers ''avoid attorney drafting costs and litigation costs'' but also ''save consumers reading time'').

[223] DMA at 9; Career at 4. One consumer similarly suggests that sellers only be required to retain ''proof'' that a consumer ''was informed that prerecorded messages would be used. *See also* Strang, No. 189, at 4 (recommending that in lieu of

Continued

these comments suggest that a ''clear and conspicuous'' disclosure be required.[224] Another requests that any disclosure requirement be a ''clear, simple, plain language disclosure'' that ''neither sugarcoats nor implicitly disparages what the customer is agreeing to.''[225]

Consumers who address the issue agree that the proposed amendment should specify what must be disclosed to consumers before they give their express written agreement to receive prerecorded calls, but take a more expansive view of the disclosures that are needed. One consumer advocate asks that the Commission ''propose specific rules to ensure the clarity and simplicity of a seller's invitation to consumers'' to provide their express written agreement, and publish the proposed rules for additional public comment.[226] The Commission disagrees that an additional notice and comment period is necessary for this purpose, given the thoughtful comments already provided on this issue.

Some consumers express concern that sellers' requests for their agreement to receive prerecorded calls might be hidden in contest entry or other forms,[227] or on the back of credit card receipts.[228] The Commission recognizes that these concerns are legitimate, based on its enforcement experience,[229] and accordingly has incorporated in the amendment a requirement that a seller's request for a consumer's agreement to receive prerecorded calls be ''clearly and conspicuously'' disclosed, as two industry comments also recommend.[230] Legal precedent established by the Commission's long use of this term of art will ensure that consumers are not deceived or confused by hidden ''agreements'' buried in fine print.[231]

One consumer comment recommends a disclosure that a consumer's agreement to receive prerecorded calls is not required as a condition of the purchase of any good or service.[232] The Commission agrees that the entire purpose of the amendment would be defeated if sellers could require consumers to agree to receive future calls delivering prerecorded messages as a condition of making a purchase. The Commission believes this point is well taken, and has incorporated in the amendment a prohibition that will prevent any such practice. The Commission does not agree, however, that an additional affirmative disclosure is necessary.

Two consumers also advocate a requirement to disclose whether the seller will sell consumers' contact information to third parties or share it with affiliates or other companies.[233] In this regard, the Commission emphasizes that a consumer's agreement with a seller to receive calls delivering prerecorded messages is non-transferable. Any party other than that particular seller must negotiate its own agreement with the consumer to accept calls delivering prerecorded messages. Prerecorded calls placed to a consumer on the National Do Not Call Registry by some third party that does not have its own agreement with the consumer would violate the TSR. Thus, because information sharing cannot be a shortcut for the required written agreement to receive prerecorded calls, the Commission sees no need to impose a disclosure about information sharing.

Suggestions that the Commission require disclosures about the risk that prerecorded calls could tie up a consumer's telephone line and pose a health or safety risk,[234] about how frequently the seller would make such calls,[235] and about whether a consumer can later opt out after agreeing to receive prerecorded calls[236] are unnecessary. The need for any such disclosure is obviated because the Commission has decided to incorporate in the amendment a requirement that all prerecorded calls promptly disclose and provide an automated interactive opt-out mechanism that immediately terminates the call after adding the called party's number to the seller's Do Not Call list.[237] Consequently, consumers who believe they are receiving an excessive number of calls from a seller or who otherwise wish to withdraw their agreement to receive such calls will be able to do so by utilizing the interactive mechanism. In addition, if a telephone line must be cleared quickly to handle an emergency, this requirement will ensure that consumers can terminate a message at any time. Similarly, a consumer request for a disclosure about whether prerecorded messages will be left on answering machines is unnecessary,[238] because, as discussed below, the Commission has decided to expand the coverage of the amendment to include prerecorded messages delivered to answering machines.[239]

The Commission is not persuaded of the need to require any of the other disclosures the consumer comments suggest. Disclosure of the times when prerecorded telemarketing calls may be made is unnecessary[240] because the TSR limits the times when telemarketing calls may be made.[241] Likewise, a disclosure that a consumer may not be able to speak to a sales representative, as advocated by one consumer,[242] would be unnecessary and redundant to a request to agree to receive ''prerecorded'' message calls.

c. Coverage of Calls That Deliver Prerecorded Messages to Answering Machines

The proposed amendment did not apply to prerecorded messages left on answering machines or voicemail systems, based on the assumption that consumer privacy interests would not be affected to the same degree when the consumer is not at home to answer the telephone and an answering machine or voicemail service picks up the message.[243] Nevertheless, the Commission specifically sought comment on whether this assumption is borne out in reality, and whether or not the amendment should apply to messages left on answering machines or voicemail systems.[244]

an express written agreement requirement, sellers be required to maintain documentation that provides ''clear and convincing evidence'' of a consumer's consent to receive prerecorded calls, including ''the name of the party giving permission, the telephone number that the advertiser may call, proof that the recipient was informed that prerecorded messages would be used, and the date that permission was given'').

[224] DMA at 9. *See also*, Vontoo at 3 (also advocating a ''clear and conspicuous'' disclosure and adding that a ''non-deceptive'' disclosure should also be required).

[225] Career at 5.

[226] AARP at 6.

[227] Bashinsky, No. 123, at 1; Crider, No. 234 (agreement should ''not [be] hidden in other forms or paperwork'').

[228] Hui, No. 119.

[229] *E.g., United States v. Craftmatic Indus., Inc.*, *supra* n.15 (hundreds of thousands of calls to consumers whose telephone numbers were obtained from allegedly deceptive prize promotion entry forms).

[230] DMA at 9; Vontoo at 3 (adding that a ''non-deceptive'' disclosure should also be required).

[231] Two consumers suggest the Commission specify location and font size requirements. Bashinsky, No. 123, at 1; Crider, No. 234. The Commission believes that the ''clear and conspicuous'' standard provides sufficient guidance, and mandating more specific requirements is not necessary.

[232] Maddock, No. 137, at 3.

[233] Byrne, No. 158; Wibbens, No. 157, at 1.

[234] Hui, No. 119, at 1.

[235] Wibbens, No. 157, at 1.

[236] *Id.*

[237] *See* the discussion in Section II.E.2, *infra*.

[238] Wibbens, No. 157, at 1.

[239] *See* the discussion in Section II.D.2.c, *infra*.

[240] Byrne, No. 158.

[241] 16 CFR 310.4(c) (restricting permissible telemarketing calls to a residence to the hours of 8:00 a.m. until 9:00 p.m., local time).

[242] Byrne, No. 158.

[243] 71 FR at 58733 (limiting the proposed amendment to calls ''answered by a person'').

[244] 71 FR at 58726–27, 58733.

Industry comments uniformly oppose expanding the scope of the proposed amendment to apply to answering machine messages.[245] Two industry comments indicate that 80–85 percent of the messages in prerecorded telemarketing campaigns are not answered by a person and are left on an answering machine or voicemail.[246] One comment argues that the low opt-out rate by consumers who find messages on their answering machines indicates that they appreciate receiving the messages.[247] Another contends that messages left on a machine ''are less disruptive and intrusive because called parties can simply delete or skip messages'' that do not interest them.[248] Two industry comments assert that consumers will benefit from the proposed exemption for prerecorded messages on answering machines in the form of lower prices resulting from lower marketing costs.[249]

No fewer than 60 individual consumers and 4 consumer advocacy organizations, in contrast, unanimously urge extension of the coverage of the amendment to prerecorded messages left on answering machines and voicemail systems.[250] Several comments point out that because of the sheer number of telemarketing calls, there has been a significant shift in consumer behavior and many consumers now use their answering machines or Caller ID devices while they are at home to screen out telemarketing calls.[251] As one says, ''I listen to the messages as they are being left on my answering machine, and thereby decide if I should pick up the phone . . . . Thus, prerecorded telemarketing messages that are left on my answering machine are often just as disruptive to me as the prerecorded telemarketing messages that I pick up before my answering machine.''[252] For these consumers, as one asserts, a prerecorded answering machine ''message is no less coercive or abusive'' than a prerecorded message that is delivered when they answer a call in person.[253]

One consumer comment emphasizes that if the amendment were not modified to apply to prerecorded messages left on answering machines, ''nothing would prevent telemarketers from shifting to using **only** calls to answering machines in their campaigns, a strategy that would further increase the number of abandoned calls.''[254] The comment explains that ''[m]achines that use Answering Machine Detection ('AMD') are programmed to disconnect if an answering machine is not detected when the call is answered,'' and that ''if the telemarketer is trying to leave a message on an answering machine, it will abandon the call if a live person answers.''[255] The comment asserts that the use of AMD devices ''has shown a dramatic rise over the past few years that has resulted in an explosion of calls that are 'abandoned' and untraceable.''[256]

Several consumer commenters consider prerecorded messages left on answering machines as no less intrusive on their privacy than prerecorded calls they answer.[257] One regards the proposed amendment's inapplicability to answering machines as ''[a] monstrous loophole through which industry can continue to penetrate the serenity of the home'' because ''[a]t least when one is there to pick up the phone and receive such calls in person he or she can hang-up and end the intrusion almost immediately.''[258]

One consumer advocate points out that because consumers can forward landline calls to their cell phones, the cost of listening to prerecorded messages could put them at ''an economic disadvantage.''[259] Another similarly notes that consumers may incur costs to retrieve prerecorded messages when doing so by cell phone or over a long distance connection.[260]

Three consumer advocates argue that prerecorded messages may fill up the message capacity of consumers' answering machines and voicemail systems, thereby preventing consumers from receiving other more urgent messages.[261] AARP stresses that ''[f]or older Americans, this is of particular concern, given the importance of communications with health providers and loved ones.''[262] Several consumers agree that their homes are so bombarded by prerecorded messages that ''eat up

[245] NAA at 7; SmartReply at 29; Message at 7.

[246] Message at 5 (stating that the ''[t]ypical message left rate for voice marketing is 85%''); Draper's at 1 (reporting that the live answer rate for prerecorded messages is only 20 percent).

[247] SmartReply at 34 (contending that 99.7 percent of the consumers who receive such calls do not opt out).

[248] NAA at 11.

[249] SmartReply at 30; Message at 7.

[250] CTAG at 1, 3; PRC at 3; AARP at 4; NCL at 1, 6.

[251] *E.g.,* Harlach, No. 000 (''[T]he majority of people have an answering service —so that we can screen our calls and talk to the people we want''); Wagner, No. 353 (''The large number of prerecorded and abandoned calls we receive has forced us to change our habits such that we now screen all calls through our answering machine. But now we have to rush to answer when it is a 'valid' call''); Abramson, No. 122 at 1; Brick, No. 309; Linan, No. 298; McCloskey, No. 248; Strang, No. 529 at 2.

[252] Abramson, No. 122 at 1–2; *see* Brick, No. 309 (''The only difference between an answered call and a message left on my answering machine is that I do not usually get up and cross the room to retrieve messages from the machine''); Hui, No. 119 (''The fact that I may do it [delete messages] in one fell swoop, as opposed to interrupting what I'm doing and answering the phone each individual time is irrelevant'').

[253] Abramson, No. 122 at 2. Three of the consumer comments assert that the amendment as proposed is ''not consistent with the TCPA, which targets even the initiation, not just delivery of such calls, to address harms such as the ringing of the phone,'' Worsham, No. 283; Abramson, No. 122 at 2; Strang, No. 189, at 3; and that application of the amendment to prerecorded messages left on answering machines is necessary ''to maintain consistency with the FCC'' which ''has determined that prerecorded calls left on answering machines violate the TCPA.'' Strang, No. 189, at 3, *citing* Report and Order 03–153, Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, 18 FCC Rcd 14014, 14107 ¶ 154, n. 544 (rel. July 3, 2003); *available at* (*http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC–03–153A1.pdf*) at p. 93; Worsham, No. 283.

[254] Strang, No. 189, at 2 (emphasis in original); *see* Bashinsky, No. 123, at 1 (Companies ''will presumably target more voicemail systems'' and this ''would have an effect of penalizing consumers who do not answer the phone when telemarketers call'').

[255] Strang, No. 189, at 2 & n.1. Such a strategy would violate § 310.4(b)(1)(iv) of the TSR for failure to connect the call to a sales representative if the resulting abandonment rate exceeds the three percent permitted by the call abandonment safe harbor. 16 CFR 310.4(b)(1)(iv) and 310.4(b)(4)(i).

[256] *Id.* at 1; *see also,* Haddox, No. 549 (receives ''many'' abandoned calls); Raqib, No. 439; Anderson, No. 354.

[257] *E.g.,* Popat, No. 120; Gray, No. 130; Racco, No. 124; *see* NCL at 4. Some comments similarly argue that deleting unwanted messages ''wastes a person's time.'' Popat, No. 120; Gold, No. 406; *see* Murphy, No. 332; Mathes, No. 252. One comment takes a more extreme position and cites having to listen to and delete unwanted prerecorded messages as a privacy infringement on the theory that ''[a]nything that requires me to exert effort that I wouldn't otherwise have had to exert that I did not ask for and from which I receive no benefit is very intrusive on my privacy.'' Hui, No. 119.

[258] Racco, No. 124; *see* Popat, No. 120; Gray, No. 130 (''A prerecorded message is intrusive no matter if it is received in person or on an answering device. Regardless of how the message is relayed to a person, the person will still have to listen''); Bashinsky, No. 123 (''A person can hang up on a recording'' but ''[t]he answering machine keeps recording and ties up the line even longer''); Maddock, No. 137; *see* Wang, No. 126 at 3 (suggesting that consumers may have a reasonable privacy expectation that messages left on their answering machines will be personal messages or messages they have requested).

[259] NCL at 4; *cf.* Swafford, No. 521 (''My biggest complaint is that solicitors are now calling my cell phone . . . & the same number keeps calling me & leaving me a voicemail which I have to delete'').

[260] CTAG at 2.

[261] AARP at 5; CTAG at 2; NCL at 3. NCL also expresses concern that message system limitations may result in ''information that is incomplete or too quickly spoken to be fully comprehended—the equivalent of the indecipherable fine print used in many advertisements.'' NCL at 3.

[262] AARP at 5; *cf.* NCL at 3 (contending that clogged message systems may prevent consumers from receiving important informational messages ''that are allowed by the TSR'' such as ''product recall alerts'' and implies that this harm is little different from a phone line that is tied up by a prerecorded message and unavailable for use in an emergency).

space''[263] on their answering machines that they cannot receive the important messages they need for ''lack of a functional answering machine.''[264] Some point out that an answering machine filled with prerecorded messages ''prevents important calls or emergency calls from sick family members from getting through.''[265]

In view of the comments, the Commission is now persuaded that privacy interests are implicated to a significant degree when prerecorded messages are delivered to answering machines, rather than to consumers who answer and listen to the messages. Taken as a whole, the comments make it clear that consumers now very often use answering machines not only to pick up messages when they are away, but also to screen out unwanted telemarketing calls when they are at home. The comments suggest that consumers may have adopted this strategy when they faced a deluge of telemarketing calls before the National Do Not Call Registry was established. At any rate, the comments indicate that consumers persist in using this strategy to deal not only with EBR-based calls, but also continuing charitable and political calls that are not subject to the Registry's restrictions. For consumers who are at home but choose not to answer a prerecorded call, the intrusion of the message as the answering machine records it is hardly less than when a message is delivered when they answer such a call. It is for this reason that the Commission now concludes that a reasonable consumer would consider prerecorded telemarketing messages left on an answering machine or voicemail service to be abusive of such consumer's right to privacy.[266]

The consumer comments also highlight a perceived increase in the number of calls that are abandoned when a consumer answers the telephone. The fact that the TSR's call abandonment prohibition does not apply to calls picked up by an answering machine may have created an inadvertent incentive for an increase in prerecorded calls targeting such devices. While calls targeting answering machines do not violate the TSR when sales agents are available to speak with consumers who answer in person, this detail of the call abandonment prohibition may have escaped the notice of some prerecorded call telemarketers. The Commission's decision to expand the scope of the amendment to include prerecorded messages left on answering machines consequently will have the added benefits of ending any such misunderstanding, and avoiding any similar incentive for targeting answering machines as a result of a difference in regulatory treatment. The Commission accordingly expects that the number of abandoned calls will diminish when the amendment takes effect.

d. Suggested Technical Modifications to the Amendment

Two industry comments request technical modifications to the amendment as first proposed. One asks that the reference to ''outbound telemarketing call'' in the amendment be replaced with ''outbound telephone call,'' the phrase used in the TSR's call abandonment provision,[267] in order to give businesses some assurance that the scope of the amendment is limited to prerecorded messages that include an offer to sell goods or services, or solicit a charitable contribution, and that a purely informational call ''made as part of a larger campaign'' will not be deemed to be part of a ''telemarketing'' campaign.[268] The Commission agrees that this change is appropriate, both for the sake of consistency with the call abandonment prohibition and to provide sellers and telemarketers with the assurance requested. Accordingly, the Commission has incorporated this revision into the final amendment.

The second request for a technical change seeks a revision of the call abandonment prohibition to clarify that it does not apply to calls to consumers who have provided the seller with a signed written agreement to receive prerecorded telemarketing calls, because no live operator will pick up such calls, as the call abandonment prohibition requires.[269] The Commission agrees that the TSR should expressly exclude prerecorded calls that comply with all applicable requirements of the amendment from the scope of the call abandonment prohibition, and has added a provision to the amendment to make that clear.[270]

*E. The Final Amendment*

Pursuant to its authority under the Telemarketing Act to include in the TSR a requirement that telemarketers may not undertake a pattern of unsolicited telephone calls which the reasonable consumer would consider coercive or abusive of such consumer's right to privacy, the Commission has determined, after careful consideration of the record and for the reasons stated above, that it should adopt a new paragraph (v) to the ''Pattern of Calls'' prohibitions in Section 310.4(b)(1) of the TSR as follows:

(v) Initiating any outbound telephone call that delivers a prerecorded message, other than a prerecorded message permitted for compliance with the call abandonment safe harbor in § 310.4(b)(4)(iii), unless:

(A) in any such call to induce the purchase of any good or service, the seller has obtained from the recipient of the call an express agreement, in writing, that:

*(i)* the seller obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the seller to place prerecorded calls to such person;

*(ii)* the seller obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service;

*(iii)* evidences the willingness of the recipient of the call to receive calls that deliver prerecorded messages by or on behalf of a specific seller; and

*(iv)* includes such person's telephone number and signature;[7] and

[263] Stumpel, No. 392, Scott, No. 362; Antonelli, No. 281; Gray, No. 130.

[264] Wong, No. 146; *see* Byrne, No. 158; Khitsun, No. 546; Perrone, No. 555; Racco, No. 124; Bashinsky, No. 123 (''Recordings can fill up a voicemail system pretty fast . . . and by monopolizing the phone's functionality with unsolicited information, telemarketers are effectively depriving consumers of the use of their phone''); Riley, No. 402 (allowing ''prerecorded calls to be sent to my telephone answering machine'' is ''an unauthorized use of my property and akin to a trespass'').

[265] Woods, No. 328; Henderson, No. 182; Gray, No. 122. One comment even confesses that ''[w]e no longer have an answering machine on our home phone, as it was being filled with more canned messages than messages we wanted.'' Burr, No. 211 (reporting that ''[w]e use our cell phone voicemail as an answering machine thanks to the extra protection against telemarketers on cell phones,'' and arguing that ''prerecorded messages should be outlawed as they are a form of harassment that can not easily be dealt with'').

[266] The Commission accordingly need not determine whether the consumers who contend that this result is required for conformity with FCC restrictions on messages left on answering machines are correct in their interpretation of the FCC's position.

[267] 16 CFR 310.4(b)(1)(iv).

[268] DMA at 1, 7–8. A number of industry comments request clarification of whether particular calls will be regarded as ''informational'' calls not covered by the TSR and the proposed amendment. Countrywide at 2; Remindmecall (Barnett, Brian), No. 46, at 1; Call Command at 4–5; Draper's at 1; NAA at 2; CenterPost at 1; MinutePoll at 2. The proper forum for such inquiries, as the Commission has previously stated, 71 FR at 58725–26, is an advisory opinion request pursuant to the Commission's Rules of Practice. 16 CFR 1.1 - 1.4.

[269] Call Command at 2, 5.

[270] *See* Section 310.4(b)(1)(v)(C) of the final amendment.

[7] For purposes of this Rule, the term ''signature'' shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

(B) in any such call to induce the purchase of any good or service, or to induce a charitable contribution from a member of, or previous donor to, a non-profit charitable organization on whose behalf the call is made, the seller or telemarketer:

*(i)* allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call; and

*(ii)* within two (2) seconds after the completed greeting of the person called, plays a prerecorded message that promptly provides the disclosures required by § 310.4(d) or (e), followed immediately by a disclosure of one or both of the following:

(A) in the case of a call that could be answered in person by a consumer, that the person called can use an automated interactive voice and/or keypress-activated opt-out mechanism to assert a Do Not Call request pursuant to § 310.4(b)(1)(iii)(A) at any time during the message. The mechanism must:

(1) automatically add the number called to the seller's entity-specific Do Not Call list;

(2) once invoked, immediately disconnect the call; and

(3) be available for use at any time during the message; and

(B) in the case of a call that could be answered by an answering machine or voicemail service, that the person called can use a toll-free telephone number to assert a Do Not Call request pursuant to § 310.4(b)(1)(iii)(A). The number provided must connect directly to an automated interactive voice or keypress-activated opt-out mechanism that:

(1) automatically adds the number called to the seller's entity-specific Do Not Call list;

(2) immediately thereafter disconnects the call; and

(3) is accessible at any time throughout the duration of the telemarketing campaign; and

*(iii)* Complies with all other requirements of this Part and other applicable federal and state laws.

(C) Any call that complies with all applicable requirements of this paragraph (v) shall not be deemed to violate § 310.4(b)(1)(iv) of this Part.

(D) This paragraph (v) shall not apply to any outbound telephone call that delivers a prerecorded healthcare message made by, or on behalf of, a covered entity or its business associate, as those terms are defined in the HIPAA Privacy Rule, 45 CFR 160.103.

1. Overview of the Final Amendment

Subparagraph (A) of the final amendment incorporates the substance of the amendment as originally proposed, with the revisions discussed above. Subparagraph (B) makes two principal modifications to the original proposal. First, it requires sellers and telemarketers to provide an automated voice and/or keypress-activated interactive opt-out mechanism in their prerecorded messages so that consumers who have agreed to receive such messages will have the option of revoking their agreement and opting out of future messages as quickly, effectively, and efficiently as consumers who receive a live telemarketing call. Second, subparagraph (B) is partly based on, and incorporates elements of, the Commission's enforcement forbearance policy with which the industry has been required to comply since that policy took effect in 2004.

The requirement that sellers and telemarketers provide an automated voice and/or keypress-activated interactive opt-out mechanism is consistent with industry comments representing that interactive technology is now affordable and in widespread use. Based on these representations, the Commission has determined that non-interactive prerecorded messages no longer need be permitted, and the proposed amendment will have the effect of prohibiting them. The record is clear that consumers regard such messages as extremely invasive of their privacy because they are completely powerless to interact with them.

By requiring an automated interactive opt-out mechanism, the amendment will enable consumers who have agreed to receive prerecorded telemarketing calls from a seller to revoke that agreement if they no longer wish to receive such calls, or find the frequency of calls from the seller abusive of their privacy. The Commission intends the requirement for an automated interactive mechanism to make revoking an agreement to receive such messages as easy as opting out from a live telemarketing call.

The Commission has also added to subparagraph (B) the requirements it originally proposed for creation of a safe harbor for prerecorded calls, and incorporated in the enforcement forbearance policy announced in anticipation of the creation of such a safe harbor in 2004. When these requirements for the proposed safe harbor were published for public comment, the responses from the industry overwhelmingly opposed the safe harbor proposal, without focusing on the proposed compliance requirements. When the Commission proposed to terminate the forbearance policy after abandoning the safe harbor proposal, however, the industry petitioned for an extension of the policy to preserve the *status quo*, asserting that sellers and telemarketers had been relying on and complying with the policy in delivering their prerecorded messages. Based on that understanding, the Commission granted the extension.

By incorporating these requirements into the amendment, the Commission is adopting provisions on which the industry has had an opportunity to comment, and with which the industry asserts many industry members have been complying for some time.[271] Now that the Commission has determined to permit the use of prerecorded messages where the consumer has expressly agreed to receive calls delivering such messages, these requirements are essential to the effective implementation of an interactive opt-out regime.

The most significant difference between the requirements of the Commission's forbearance policy and the requirements of subparagraph (B) is the elimination of the option under the forbearance policy for sellers and telemarketers to provide a telephone number consumers could call to opt out as the sole and exclusive opt-out mechanism. That option was necessary to permit the continued use of prerecorded messages when the forbearance policy was announced in 2004 because, as many in the industry argued at that time, interactive technology was ''costly, burdensome, and not widely available.''[272] Now that the industry comments uniformly represent that interactive technology is affordable and widely available, it would be inconsistent with the interactive opt-out requirement of the final amendment to permit sellers and telemarketers to require consumers who answer a prerecorded call in person to place a separate call to a specified telephone number in order to opt out. The final amendment further modifies this element of the forbearance policy, as discussed below, to clarify that a toll-free telephone number that connects to an automated interactive opt-out mechanism must be provided whenever a prerecorded message may be delivered to an answering machine or voicemail service, so that consumers who receive such messages will have an easy and effective opt-out option.

2. Analysis of Revisions to the Final Amendment

The introductory language in Section 310.4(b)(1)(v) revises the proposed amendment in five respects. The most significant is the deletion of the phrase,

[271] *See* Section II.B.5.b.i, *supra*.

[272] 71 FR at 58725.

''when answered by a person,'' to expand the coverage of the amendment to include prerecorded messages left on answering machines and voicemail services for the reasons previously discussed in Section II.D.2.c above. The revised language also replaces the phrase ''outbound telemarketing call'' with ''outbound telephone call'' for the reasons discussed in Section II.D.2.d above. In addition, the revised introduction incorporates the proviso that appeared at the end of the original proposal, with no change in substance, to make it clear that the requirements of the amendment do not apply to prerecorded messages used to comply with the call abandonment safe harbor pursuant to Section §310.4(b)(4)(iii).

Section 310.4(b)(1)(v)(A)(*i*) adds to the substance of the amendment as proposed a requirement that sellers obtain the written agreement necessary to place prerecorded calls only after ''clearly and conspicuously'' disclosing that the purpose of the agreement is to authorize the seller to place such calls to the consumer, as discussed in Section II.D.2.b above. Section 310.4(b)(1)(v)(A)(*ii*) further specifies that a seller may not condition the purchase of any good or service on a consumer's agreement to authorize prerecorded calls, as previously discussed in Section II.D.2.b.

Section 310.4(b)(1)(v)(A)(*iii*) contains the written agreement requirement of the amendment as proposed. The only change from the original language is the substitution of the words ''specific seller'' in place of the words ''specific party'' in the proposed amendment to make it clear that prerecorded calls may be placed only by or on behalf of the specific seller identified in the agreement. It is the Commission's intention that agreements authorizing prerecorded calls be limited to the specific seller identified in the agreement, and not be transferable to any other party. The only new element in Section 301.4(b)(1)(v)(A)(*iv*), which retains the requirement of a signature and telephone number that a seller or telemarketer is authorized to call, is the addition of a footnote that is intended to eliminate any ambiguity regarding the Commission's intention that any electronic signature permitted by the E–SIGN Act may be used to formalize the required written agreement, which may itself be an electronic agreement made pursuant to that Act, as discussed in Section II.D.2.a above.

Unlike Section 310.4(b)(1)(v)(A), which applies only to outbound telephone calls ''to induce the purchase of any good or service,'' Section 310.4(b)(1)(v)(B) additionally covers outbound telephone calls by for-profit telefunders ''to induce a charitable contribution from a member of, or previous donor to, a non-profit charitable organization on whose behalf the call is made,'' pursuant to a partial exemption the Commission is granting for the reasons discussed in Section II.G.3 below. Neither Section 310.4(b)(1)(v)(A) nor Section 310.4(b)(1)(v)(B) applies to a non-profit charity that places its own prerecorded calls, because the Commission lacks jurisdiction over not-for-profit entities.

Section 310.4(b)(1)(v)(B) adopts the four interactive opt-out requirements the Commission proposed for a prerecorded call safe harbor, and accordingly incorporated in its enforcement forbearance policy. Section 310.4(b)(1)(v)(B)(*i*) incorporates the first provision of the proposed safe harbor and forbearance policy, which requires sellers and telemarketers to allow the telephone to ring for at least fifteen seconds or four rings so that consumers have a reasonable opportunity to answer.[273] Section 310.4(b)(1)(v)(B)(*ii*) copies the second provision of the proposed safe harbor and forbearance policy, requiring that the message begin playing within two seconds of the called party's completed greeting.[274] The requirement in Section 310.4(b)(1)(v)(B)(*ii*)(A) that prerecorded calls provide an up-front disclosure of how to opt out of future calls adopts the third requirement of the proposed safe harbor and enforcement forbearance policy.[275] Finally, Section 310.4(b)(1)(B)(*iii*) tracks the fourth requirement of the proposed safe harbor and forbearance policy, which mandates that sellers and telemarketers comply with all other requirements of the TSR and federal and state law.[276]

Sections 310.4(b)(1)(v)(B)(*ii*)(A) and (B) expand on the third requirement of the proposed safe harbor and forbearance policy by clarifying that prerecorded calls must present an opportunity to assert an entity-specific Do Not Call request if the call ''could be answered in person by a consumer'' [subparagraph (A)], or if the call could be answered ''by an answering machine or voicemail service'' [subparagraph (B)].[277] Two separate provisions are necessitated in the interest of minimizing the disclosures required. If a seller or telemarketer provides both voice and keypress-activated opt-out mechanisms, and is able to determine whether a call is answered by a person or by an answering machine or voicemail service, it may tailor the message to include the appropriate opt-out message and mechanism.

Section 310.4(b)(1)(v)(B)(*ii*)(A) specifies that, if there is any possibility that a call could be answered in person by a consumer, an automated interactive opt-out mechanism must be available throughout the call. The provision permits either a voice or keypress-activated opt-out mechanism to be used, or both in combination. The provision further requires that, once invoked, the interactive mechanism must automatically add the number called to the seller's entity-specific Do Not Call list, and must then promptly terminate the call, as recommended by some industry comments.[278] As the Commission has previously stated, the inability of some consumers to use their telephone in an emergency because a prerecorded message cannot be disconnected simply by hanging up ''creates legitimate cause for concern.''[279] To ensure that all consumers can quickly disconnect a prerecorded call in an emergency, it is necessary to require, as this provision does, that sellers and telemarketers use an opt-out mechanism that automatically records the number called

[273] This provision tracks Section 310.4(b)(5)(i) of the proposed amendment to create a safe harbor for prerecorded calls and the first requirement of the forbearance policy. *Compare* 69 FR at 67294 *with* 71 FR at 77635. This part of the proposed amendment in turn mirrored Section 310.4(b)(4)(*ii*) of the TSR's call abandonment safe harbor. 16 CFR 310.4(b)(4)(ii).

[274] This requirement duplicates Section 310.4(b)(5)(ii) of the proposed amendment to create a prerecorded call safe harbor and the second requirement of the forbearance policy. *Compare* 69 FR at 67294 *with* 71 FR at 77635. This part of the proposed amendment in turn was based on Section 310.4(b)(4)(iii) of the TSR's call abandonment safe harbor.

[275] This provision mirrors Section 310.4(b)(5)(ii)(A) of the proposed safe harbor amendment and the third requirement of the forbearance policy. *Compare* 69 FR at 67294 *with* 71 FR at 77635.

[276] This requirement replicates Section 310.4(b)(5)(ii)(B) of the proposed amendment to create a prerecorded call safe harbor and the fourth requirement of the forbearance policy. *Compare* 69 FR at 67294 *with* 71 FR at 77635.

[277] *Id.* The NPRM for the proposed safe harbor contemplated either the provision of a toll-free number for opt-out requests or an interactive mechanism that would connect to an operator or automatically record an opt-out request. 71 FR at 77635 (the forbearance policy provision); *see also* 67 FR at 67289 at nn.13–14, and accompanying text (proposed safe harbor).

[278] *See* note 126, *supra,* and accompanying text. The Commission intends the requirement that the mechanism ''promptly disconnect'' the call to permit a very brief automated acknowledgment that the telephone number of the person called has been added to the seller's entity-specific Do Not Call list.

[279] 71 FR at 58723. For analogous policy reasons, the FCC prohibits prerecorded calls ''[t]o any emergency telephone line, including any 911 line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency.'' 47 CFR 64.1200(a)(1)(i).

on the entity's Do Not Call list, as interactive systems now in use permit,[280] rather than allow the potential delays of connecting the call to an operator or sales agent to add the number to the list.[281]

Section 310.4(b)(1)(v)(B)(*ii*)(B), in turn, details what is required if there is any possibility that a prerecorded call could be answered by an answering machine or voicemail service. Like the proposed safe harbor, which permitted sellers and telemarketers to provide a toll-free number consumers could call to opt out, this provision requires that such a number be provided and disclosed promptly at the outset of the call because industry data shows that 80–85 percent of all prerecorded calls are delivered to answering machines and voicemail services. The provision further requires that the number connect directly to an automated interactive opt-out mechanism that is accessible at any time throughout the duration of the telemarketing campaign. This is necessary to ensure that consumers can easily and immediately assert their opt-out rights, regardless of the time of day when they listen to their messages, without the additional burden of having to wait to opt out until the next business day during regular business hours when an operator would be available to record the opt-out request.

Section 310.4(b)(1)(v)(C) provides a clarification requested by the industry. It specifies that ''any call that complies with all applicable requirements'' of the amendment will not violate the call abandonment prohibition in Section 310.4(b)(1)(iv) of the TSR. This provision is intended to provide assurance that a fully compliant prerecorded call will not violate the call abandonment prohibition solely because the person who answers is connected within two seconds to a recording, rather than to a telemarketer, as the call abandonment prohibition requires.

Finally, Section 310.4(b)(1)(v)(D) provides an exemption from all the requirements of the amendment for certain prerecorded healthcare calls. For the reasons discussed in Section II.G.2 below, the Commission is exempting outbound telephone calls made by or on behalf of a covered entity or its business associate, as those terms are defined in the HIPAA Privacy Rule.

*F. Implementation Issues*

A number of industry comments urged two related implementation measures. First, many industry comments ask that their databases of current EBR customers be ''grandfathered,'' either temporarily or permanently, to ease the transition to the written agreement requirement. Second, these and other industry comments also request that the Commission provide an adequate ''phase-in'' period to allow time for industry education efforts and preparation of systems to comply.

1. Requests for ''Grandfathering'' Existing Customer Databases

Several comments urged that the Commission allow sellers to continue placing prerecorded message calls to established customers without requiring those customers' agreement to continue receiving them. Two industry comments seek permanent ''grandfathering,'' whereby they would have no obligation to obtain consent from their established customers, and would need to seek consent only from new customers acquired after the written agreement requirement takes effect.[282] Others seek a more limited type of ''grandfathering.''[283] One advocates treating established customers who have been given an interactive opportunity to opt out of prerecorded messages calls, but have not done so, as having given express consent.[284] Another asks that existing EBR customers be ''grandfathered'' where ''policies are in place to gradually convert willing customers'' into ''customers who have provided consent,'' because this would give businesses an ''incentive to comply immediately, and time to migrate so that their business does not suffer'' the harm of a firm deadline for the conversion.[285] Finally, one comment argues that companies should be permitted to obtain consent from established customers with a telephone keypress mechanism.[286]

The industry comments that advocate some form of ''grandfathering'' of sellers' EBR customers argue that it will be costly and time-consuming for sellers to seek agreements to receive prerecorded messages from every EBR customer. The Commission is keenly aware of this concern, and accordingly has decided to defer the effective date of the written agreement requirement for a full year during which sellers and telemarketers may continue to place prerecorded calls to the seller's existing and new EBR customers, as part of the phase-in of the amendment's requirements discussed below.

2. Requests for a ''Phase-In'' Period

Many of the industry comments request that the Commission defer the effective date of the proposed amendment for some period of time after it is issued in order to give businesses time to prepare to comply.[287] One comment explains that, depending on the form of consent required, it will take time for businesses to redesign web sites, revise telemarketing scripts, and prepare and print new credit card and loyalty program applications and response cards to obtain consent from new customers, as well as to use up existing supplies of these materials and create new record-keeping systems and procedures to store and access the new consents they obtain.[288] Another adds that small business telemarketers will need time, given a 9–12 month development and sales cycle, to find new business options to replace anticipated revenue losses from reductions in prerecorded messaging.[289] A third comment points out that time will also be needed for industry education efforts.[290]

These requests from the industry comments for a ''phase in'' period before the amendment takes effect range from 3 to 18 months. In order to ensure that there is sufficient time for industry to conduct needed training on the new requirements and to transition to

[280] MinutePoll at 8; Global at 11; *see* DMA at 2 (noting that a keypress ''is unambiguous, and the consumer knows with certainty that they have made the request'').

[281] Consumer advocates make the point that rotary dial telephone users will be unable to assert opt-out requests in recorded messages with only keypress opt-out mechanisms. *See* note 48, *supra*. The record contains nothing, however, indicating that any appreciable number of households still use such antiquated equipment, and it is reasonable to conclude that few remain. The record does suggest, in contrast, that the industry's use of voice recognition systems is growing and is likely to increase. The Commission therefore believes that it is not necessary for the amendment to mandate inclusion of potentially costly voice recognition capability in the required interactive opt-out mechanism.

[282] NAA at 3 (Newspapers ''have more than 40 million existing residential subscribers, and to require newspaper circulation departments to contact each of these subscribers to obtain written consent would be exceptionally unreasonable and burdensome''); NNA at 5 (''[T]he burden of contacting a large database to obtain written consent would far outweigh any benefit specific express consent may provide'').

[283] *E.g.*, Draper's at 1; Message at 5.

[284] Message at 6.

[285] SmartReply at 6, 22–23. SmartReply notes that many ''top 100'' retailers have EBR customer databases of from 15–30 million customers. SmartReply at 18.

[286] Global at 11. *See* the discussion in Section II.D.2.a, *supra*.

[287] Soundbite at 19 (a ''reasonable period''); Countrywide at 3 (3 months); DMA at 2 (6 months); MP at 3 (6 months); Xpedite at 5 (6 months); Career at 5–6 (at least 6 months); MinutePoll at 10 (at least 6 months); IAC at 2, 10 (at least 6 months); VMBC at 2 (6–8 months); SmartReply at 15 (18 months for ''Top 100'' Fortune 500 retailers with 15 million customers in their databases).

[288] DMA at 9.

[289] MinutePoll at 10.

[290] NAA at 9–10.

revised contracts, web pages and systems and procedures needed to preserve evidence of customer agreements to receive prerecorded calls after the effective date, the Commission has decided to provide a one-year phase-in period from the date of publication of the final amendment in the **Federal Register** for the express written agreement provisions added to Section 310.4(b)(1)(v)(A) of the TSR by the final amendment.

There is no evident reason, however, to provide an equally prolonged phase-in period for the automated interactive opt-out provisions of the amendment. Because sellers and telemarketers assert they are already complying with the Commission's forbearance policy, and many already are using systems with automated interactive keypress or voice-activated opt-out capabilities,[291] the Commission has no reason to believe that a great deal of time will be needed for implementation of these requirements. Accordingly, the Commission has determined that the automated interactive opt-out provisions should take effect on December 1, 2008.

Thus, beginning on December 1, 2008, prerecorded messages, whether delivered by sellers and telemarketers to consumers who answer the telephone or to answering machines or voicemail services, will be required to comply with the new automated interactive opt-out requirements added to the TSR as Section 310.4(b)(1)(v)(B) by the amendment. Although the Commission's previously announced enforcement forbearance policy will be revoked on that date because it is inconsistent with the amendment's automated interactive opt-out requirements, the Commission will continue to permit sellers to place prerecorded calls to both existing and new EBR customers for an additional nine months, until September 1, 2009, except to an EBR customer who uses the required automated interactive mechanism to opt out or whose EBR has expired. Thereafter, sellers and telemarketers may place prerecorded calls only to consumers from whom they have obtained signed, written agreements to receive such calls. Thus, after the amendment takes complete effect on September 1, 2009, the written agreement requirement will replace the EBR requirement as the sole authorization for continuing to place prerecorded message calls to numbers on the Registry, although an EBR will continue to serve as authorization for placing live telemarketing calls to consumers.

*G. Exemptions*

Several industry comments seek exemptions from the requirements of the proposed amendment. These comments urge exemptions for healthcare-related calls governed by HHS regulations issued pursuant to HIPAA,[292] or by Medicare requirements for enrolled durable medical equipment (''DME'') suppliers;[293] for non-profit entities that use third-party telefunders to deliver prerecorded solicitations;[294] for small businesses as defined by Small Business Administration regulations;[295] and for prerecorded messages offering contract renewals or changes to existing contracts addressing post-contract events or changed circumstances.[296] Other comments urge either an exemption or non-enforcement policy statement that would permit entities that are not themselves subject to FTC jurisdiction to employ third-party telemarketers (over which the FTC does have jurisdiction) to deliver prerecorded messages without the express written agreement of their EBR customers, as they themselves may do under FCC rules.[297]

1. Legal Authority for Granting Exemptions

In adopting the original TSR in 1995, the Commission incorporated a number of exemptions. At that time, the Commission stated:

> The Commission has concluded that it is vested by the Telemarketing Act with discretion both in determining what constitutes ''telemarketing'' under the Act and in defining deceptive and abusive practices. In exercising that discretion, the Commission has decided that narrowly-tailored exemptions are necessary to prevent an undue burden on legitimate businesses and sales transactions. Section 310.6 enumerates these exemptions. The Commission determined the advisability of each exemption after examining the Act and considering the following factors: (1) Whether Congress intended that a certain type of sales activity be exempt under the Rule; (2) Whether the conduct or business in question already is regulated extensively by Federal or State law; (3) Whether, based on the Commission's enforcement experience, the conduct or business lends itself easily to the forms of deception or abuse that the Act is intended to address; and (4) Whether requiring businesses to comply with the Rule would be unduly burdensome when weighed against the likelihood that sellers or telemarketers engaged in fraud would use an exemption to circumvent Rule coverage.[298]

[291] *See* Section II.B.5(b)(i), *supra*.

[292] Silverlink Communications, Inc. and Eliza Corp. (Winslow) (''Silverlink/Eliza''), No. 586, at 16; medSage Technologies, LLC (''medSage''), No. 606, at 8; PolyMedica Corp. (''PolyMedica''), Nos. 594, 609, at 4–5. Two comments seek only an extension of the Commission's enforcement forbearance policy, PMSI–Tmesys, No. 215, at 2; Gorman Health Group, No. 102, at 2; while another asks only that prescription refill reminders be considered ''informational'' calls that are not covered by the proposed amendment. National Association of Chain Drug Stores, No. 634, at 2. *See also, e.g.,* Sliwa, No. 113 (consumer urging an ''exception'' for ''lifemarketing'' healthcare calls); Merrow, No. 94 (objecting to any restriction on healthcare calls); Conway, No. 81; Erwin, No. 133; Genter, No. 68; Lopez, No. 73; Pace, No. 104.

[293] medSage at 8; PolyMedica at 4–5; Access Diabetic Supply LLC (''Access''), No. 630, at 12.

[294] DMA at 6–7; *cf.* Heritage at 2 (citing First Amendment cases). One consumer comment also supports an exemption for charities. Maddock, No. 137, at 1–2.

[295] NNA at 5. The 13 brief comments received from small and medium sized community newspapers generally express their opposition to any restriction on their ability to use prerecorded telemarketing messages to contact established customers, but do not request an exemption. Thomasville Times-Enterprise, No. 175; Stillwater News Press, No. 176; Joplin Globe, No. 177; The News and Tribune, No. 178; The Tribune-Democrat, No. 179; Effingham Daily News, No. 180; Eagle-Tribune Publishing Co., No. 181; Clinton Herald, No. 187; CNHI - Terre Haute Tribune Star, No. 190; Pharos-Tribune, No. 191; Eagle Tribune, No. 214; Ada Evening News, No. 445; and Community Newspaper Holdings, Inc., No. 464.

[296] IAA at 11.

[297] CBA at 4 (requesting an express exemption); Wells Fargo & Co., No. 573, at 2 (seeking either an exemption or non-enforcement policy statement); Visa U.S.A., Inc., No. 597, at 2 (advocating a non-enforcement policy statement). Although CBA advances an argument that the requested exemption is required by the Telemarketing Act, based on the *status* of exempt entities, the argument does not address the *activity* basis for the Commission's assertion of jurisdiction over third-party telemarketers that are employed by exempt entities. Commission Advisory Opinion, Stonebridge Life Insurance Co. (Aug. 19, 2003), *available at* (*http://www.ftc.gov/os/2003/08/tsradvopinion.htm*).

[298] 60 FR 43842, 43859 (Aug. 23, 1995). In addition, the Telemarketing Act expressly empowers the Commission to prevent violations of the TSR ''in the same manner, by the same means, and with the same jurisdiction, *powers*, and duties as though all applicable terms and provisions of the Federal Trade Commission Act ('FTC Act'), 15 USC 41 *et seq.*, were incorporated into and made a part of this chapter.'' 15 USC 6105(b) (emphasis added). Among the powers conferred by the FTC Act, and thus by the Telemarketing Act, is authority to grant exemptions, pursuant to a petition or on the Commission's own motion, if ''the Commission finds that the application of a rule . . . to any person or class of persons is not necessary to prevent the unfair or deceptive act or practice to which the rule relates.'' 15 USC 57a(g)(2). Section 553 of the Administrative Procedure Act (''APA''), 5 USC 553, which governs any such exemption action, requires a notice and comment proceeding *except* ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest.'' 5 USC 553(b)(3)(B) (emphasis added). The Commission has determined that there is good cause to adopt the two exemptions discussed below. No further notice and comment is necessary or appropriate because the position of all interested parties on the relevant issues has been adequately developed in this proceeding, and no public interest purpose would be served by protracting this proceeding further.

The Commission has determined that, for different reasons, it is appropriate to incorporate into the amendments adopted herein two suggested exemptions: one for healthcare-related prerecorded message calls subject to HIPAA and one for prerecorded message charitable fundraising calls by third-party telemarketers.[299]

2. Exemption for Healthcare-Related Prerecorded Calls Subject to HIPAA

Healthcare-related prerecorded message calls subject to HIPAA include not only calls by medical providers and their third-party telemarketers, but also calls by DME suppliers and by Medicare Part D providers and their third-party telemarketers. The purpose of the HIPAA regulations is to maintain the privacy of personally identifiable medical information, whereas the purpose of the amendment is to protect consumers' privacy in their homes. Nonetheless, the Commission is persuaded by certain of the commenters' arguments that these purposes are related and intertwined and, moreover, that the placing of such calls ''already is regulated extensively by Federal . . . law.''[300] Further, the Commission's law enforcement experience does not suggest that the placing of healthcare-related prerecorded message calls subject to HIPAA ''lends itself easily to the forms of deception or abuse that the [Telemarketing] Act is intended to address.''[301] Therefore, the Commission has determined that an exemption—similar to several original exemptions incorporated into the Rule in 1995[302]—is warranted for healthcare-related prerecorded message calls subject to HIPAA.

a. Arguments Advanced for an Exemption

Unlike the other exemption requests, the comments seeking exemption of healthcare-related prerecorded calls governed by HIPAA and by Medicare requirements for enrolled DME suppliers provide extensive and specific information about the industry and practices for which an exemption is sought, detailed rationales, and draft language for an exemption. An exemption is necessary, the commenters contend, because many important healthcare-related calls might be considered ''telemarketing'' calls, rather than ''informational'' calls not covered by the TSR, because they are arguably part of ''a plan, program, or campaign conducted to induce the purchase of goods or services.''[303] These prerecorded calls include flu shot and other immunization reminders, prescription refill reminders, health screening reminders; calls to obtain permission to contact doctors for renewal of medication or medical supply orders; calls to obtain documentation needed for billing health plans; calls by home health agencies to follow-up on patients for six months after discharge; calls monitoring patient compliance with prescribed medical therapies; and calls encouraging enrollment in disease management or treatment programs, and in migration from branded to generic drugs, and from retail to mail order pharmacies.[304] Commenters fear that such calls may not be considered to be strictly ''informational'' because they can result in a payment or co-pay for medication, durable medical equipment, or medical services.[305]

At any rate, the crux of the arguments seeking exemption is the contention that Congress, in the case of DME suppliers, and HHS, in the case of HIPAA, has already considered and prescribed rules based on important public policy considerations that govern healthcare-related calls that might be subject to the proposed amendment under the TSR's definition of ''telemarketing.'' If these requirements have not occupied the field, the comments urge the Commission to consider the weight that the Congressional and administrative determinations have given to the improvement of healthcare on a cost-efficient basis, and exempt these healthcare-related calls from any restriction in the TSR on prerecorded telemarketing calls.

i. DME Supplier Telephone Solicitation Restrictions

Two commenters emphasize that calls from DME suppliers—permitted by statute and by HHS regulations—provide measurable public benefits in the treatment of patients by reducing the taxpayer-supported costs of the Medicare and Medicaid programs and by measurably improving patient compliance rates with home treatment regimens. This results in improved clinical outcomes and a reduction in costly complications.[306] The use of prerecorded messages, one commenter asserts, is necessary not just to control costs, but to ensure that elderly and chronically ill patients receive uniform, clear messages they can understand and, with the aid of interactive technology, to enable DME suppliers to obtain patient responses that provide documentation required by Medicare rules.[307]

These calls are subject to significant federal regulation similar in purpose to the prerecorded call amendment. As two of the comments point out,[308] Congress has expressly prohibited DME suppliers and their agents by statute from unfettered telephone solicitation of Medicare patients. The statute states that a DME supplier ''may not contact an individual enrolled under this part by telephone'' except in three specific circumstances: (1) ''The individual has given written permission to the supplier to make contact by telephone regarding the furnishing of the covered item;'' (2) ''The supplier has furnished a covered item to the individual and the supplier is contacting the individual only regarding the furnishing of the covered

[299] *See* 16 CFR 1.25. The other industry requests for relief, for small businesses, for contract renewals and modifications, and for third-party telemarketers covered by the TSR that are employed by businesses not subject to FTC jurisdiction, do not make a persuasive case for exemption under the exemption criteria discussed above.

[300] 60 FR 43842 at 43859 (Aug. 23, 1995).

[301] *Id.*

[302] *See, e.g.*, 16 CFR 310.6(b)(1) (partial exemption for sale of pay-per call services subject to the Telephone Disclosure and Dispute Resolution Act); 16 CFR 310.6(b)(2) (partial exemption for sale of franchises subject to the Franchise Rule); 16 CFR 310.6(b)(7) (full exemption for telephone calls between a telemarketer and any business).

[303] 16 CFR 310.2(cc).

[304] Silverlink/Eliza at 3–5; medSage at 2; *see* Access at 2; PolyMedica at 2; PMSI–Tmesys, at 2.

[305] For calls to be covered under the TSR, they must be part of a ''plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call.'' 16 CFR 310.2(cc). The commenters addressing the need for an exemption for health-related HIPAA-covered calls largely assume, but do not methodically analyze, whether the calls in question meet each element of the definition. While prerecorded calls to induce consumers to make an initial selection of a particular healthcare plan or provider would meet the definition, these calls by a plan or provider previously selected—which are, for the most part, in the nature of medical treatment and prevention reminders—arguably do not constitute a ''plan, program, or campaign which is conducted to induce'' purchases. The October 4, 2006, **Federal Register** notice drew a careful distinction between commercial telemarketing calls and purely ''informational'' calls. The notice made it clear that the Commission considers calls ''such as notifications of flight cancellations, reminders of medical appointments and overdue payments, and notices of dates and times for delivery of goods or service appointments'' as informational in nature, and not for the purpose of conveying a sales message. ''Such strictly informational calls . . . whether live or prerecorded, have never been covered by the TSR.'' 71 Fed. Reg. at 58719.

[306] medSage at 5; Access at 10.

[307] Access at 11–12. DME suppliers are required, for example, to document the frequency with which a patient is actually using diabetic supplies, and of the replacement of nebulizer accessories, such as respiratory supplies, *Id.,* and are prohibited from shipping many replacement supplies, particularly diabetic testing supplies, on a regular basis unless the patient has nearly exhausted a prior supply. *Id.* at 2–3.

[308] Access at 8; medSage at 3.

item;''[309] and (3) ''If the contact is regarding the furnishing of a covered item other than a covered item already furnished to the individual, the supplier has furnished at least 1 covered item to the individual during the 15-month period preceding the date on which the supplier makes such contact.''[310]

Other subsections of this provision, enforced by the HHS Inspector General, prohibit Medicare payment for any items furnished to an individual by a supplier that knowingly violates the telemarketing prohibition,[311] and, in the case of a pattern of unlawful telephone solicitations, exclusion from participation in the DME supplier program.[312] In addition, HHS Medicare regulations provide for civil penalties of up to $12,000 for any DME supplier that fails to make a refund to a Medicare beneficiary for a covered service for which payment is precluded due to a violation of the telephone solicitation prohibition.[313]

The commenters add that to be enrolled as a DME supplier eligible to receive payments for an item covered by Medicare under the Social Security Act, a company must submit an application for billing privileges, and receive approval from the Centers for Medicare and Medicaid Services (''CMS''). The application requires DME suppliers to meet (and continue to meet as a condition of receiving payments) certain quality standards that serve to provide further protection for consumers. They include requirements that the DME supplier operate its business in compliance with all federal and state licensing requirements from a physical facility that can be inspected by CMS (and not a mere postal box), and maintain liability insurance and a customer complaint process.[314] This ''detailed and protective'' regulatory scheme, as one commenter notes, operates ''to screen [out] scofflaws'' and ''to protect patients from, *inter alia*, abusive telemarketing.''[315]

ii. HIPAA Marketing Restrictions

Silverlink/Eliza note that when Congress enacted HIPAA in 1996, one of its stated goals was to ''improve . . . the efficiency and effectiveness of the health care system by encouraging . . . the electronic transmission of certain health information.''[316] In enacting HIPAA to set standards under which the healthcare sector could share and use health information and communicate with patients, Congress recognized that the use of advanced communications technology could compromise an individual's privacy interests, and accordingly, directed HHS to promulgate rules that would appropriately balance patient interests in protecting the privacy of their healthcare information with the Congressional ''objective of reducing the administrative costs of providing and paying for healthcare.''[317]

Another comment points out that the HIPAA Privacy Rule[318] issued by HHS as directed by Congress, prohibits a ''covered entity''[319] and its ''business associate''[320] from using or disclosing ''protected health information''—information relating to a patient's medical condition or treatment—for purposes of marketing, without specific, written authorization from the patient.[321] The commenter emphasizes that this prohibition covers not only written communications, but ''*any* form of telephonic communication, whether through a live caller or a prerecorded message, regardless of whether there is a pre-existing business relationship,'' and in this regard, ''is far broader than'' the prerecorded call amendment.[322]

Two of the commenters point out that although HHS ''originally proposed privacy rules that would not have excluded healthcare communications from their patient authorization requirement,'' HHS ultimately concluded, after two full notice and comment rulemaking proceedings, that such a restriction on healthcare communications ''would materially affect the quality and efficiency of healthcare.''[323] Thus, in order to allow ''the flow of health information needed to provide and promote high quality health care and to protect the public health and well being,''[324] the final HIPAA Privacy Rule exempts only healthcare-related communications from the requirement of prior authorization by patients.[325] The requirements of the Privacy Rule and its exemptions are enforced by the Office of Civil Rights in HHS, with violations subject to both civil and criminal penalties, and therefore, according to one comment, ''the 'cost' of violating HIPAA can be enormous.''[326]

iii. Improved Healthcare Outcomes

The comments advocating an exemption for healthcare-related prerecorded message calls subject to HIPAA emphasize that the ''opt-in'' requirement of the proposed amendment would jeopardize the progress that interactive prerecorded messages have made in improving patient outcomes and helping control healthcare costs.[327] As one comment

[309] HHS implementing regulations specify that this provision is limited to arranging delivery of the item. 42 CFR 424.57(c)(11).

[310] 42 USC 1395m(a)(17)(A).

[311] 42 USC 1395m(a)(17)(B).

[312] 42 USC 1395m(a)(17)(C).

[313] medSage at 4.

[314] 42 CFR 424.57(c). DME suppliers that violate the terms of their certification are subject to adverse regulatory action by HHS. *E.g.*, *Medisource Corp. v. CMS*, Docket No. A–05–112 (HHS Department Appeals Board, Jan. 31, 2006).

[315] medSage at 4.

[316] Silverlink/Eliza at 9, citing HIPAA, Pub. L. No. 104–191, § 261, 110 Stat. 1936 (1996) (*codified, as amended,* at 42 USC 1320d).

[317] *Id.* at § 1172(b) (*codified, as amended,* at 42 USC 1320d-1(b)).

[318] Standards for Privacy of Individually Identifiable Health Information, 45 CFR Parts 160 and 164.

[319] A ''covered entity'' is defined as ''(1) A health plan; (2) A health care clearinghouse; and (3) A health care provider who transmits any health information in electronic form . . . .'' 45 CFR 160.103. One comment explains that health insurers, home healthcare providers that bill electronically, and billing services are therefore ''covered entities.'' medSage at 5 n.7.

[320] Businesses that make prerecorded calls on behalf of a ''covered entity'' are ''business associates'' of the covered entity, as are Medicare suppliers and pharmacies. *See* 45 CFR 160.103.

[321] medSage at 5. *See* 45 CFR 164.508(a)(3)(i) (''a covered entity must obtain an authorization [from the patient] for any use or disclosure of protected health information for marketing'').

[322] *Id. See also* 45 CFR 164.501 (''Marketing'' definition specifically prohibiting (in § (2)) a covered entity from disclosing, without patient consent, protected health information to another entity that would enable the other entity (or its affiliates) to communicate with patients of the covered entity to market the other entity's products or services); 67 FR 53182, 53188–89 (Aug. 14, 2002) (announcing the addition of ''a new provision to the definition of 'marketing' [45 CFR 164.501(2)] to prevent situations in which a covered entity could take advantage of the business associate relationship to sell protected health information to another entity for that entity's commercial marketing purposes'').

[323] Silverlink/Eliza at 9–10; medSage at 6.

[324] Access at 6.

[325] The final Privacy Rule permits only the following types of communications with patients without their prior authorization:

(i) To describe a health-related product or service . . . that is provided by, or included in a plan of benefits of, the covered entity making the communication . . .; (ii) For treatment of the individual; or (iii) For case management or care coordination for the individual, or to direct or recommend alternative treatments, therapies, health care providers, or settings of care to the individual.

45 CFR 164.501. One comment quotes HIPAA guidance that '''many services, such as [prescription] refill reminders or the provision of nursing assistance through a telephone service, are considered treatment activities if performed by or on behalf of a health care provider, such as a pharmacist.''' PolyMedica at 3.

[326] medSage at 5 & n.6.

[327] The comments emphasize that available alternatives to the use of interactive prerecorded messages are more expensive, less efficient or less successful in communicating with patients, Silverlink/Eliza at 5; medSage at 5; and would strain the ability of the healthcare system to comply without passing on significant cost increases. PolyMedica at 3 (a switch to live calls would be cost prohibitive); Access at 2–3 (DME suppliers work on ''very small profit margins'' and the cost of new communication systems would detract from ability to serve patients).

explains, while proactive patients who are attentive to their healthcare may be likely to provide a written agreement to authorize prerecorded messages from their healthcare providers, such reminder and other communications are most needed by the patients who are least attentive to their healthcare—those who ''frequently procrastinate or make ill-informed decisions''—and therefore are least likely to get around to responding to requests for authorization to receive such calls.[328] Thus, for example, as one commenter reports, ''up to 70% of patients with long-term prescriptions fall off therapy'' in the absence of prescription refill reminders, with resulting costly adverse impacts, including increased ''hospitalization, morbidity and mortality rates.''[329] Two of the comments cite independent statistics and studies, including a report by the Government Accountability Office, as evidence of measurable health benefits from the use of interactive prerecorded messages in patient care.[330]

iv. No Record of Coercive or Abusive Healthcare Calls

Two commenters who advocate an exemption for healthcare-related prerecorded message calls subject to HIPAA contend that the record shows no history of conduct by those who place such calls that is ''coercive or abusive.''[331] Both cite the Silverlink Survey, discussed above,[332] where 45 percent of the respondents indicated they ''would like'' or ''would not mind'' automated healthcare reminder calls, as evidence showing ''to a 'statistically significant' degree''[333] that consumers are more tolerant of healthcare-related calls than other types of calls.[334] One emphasizes that ''[i]n fact, the level of consumer support for automated health-related calls is similar to the level of consumer support for the established business relationship exemption the FTC already granted for telemarketing calls that use sales representatives.''[335]

The comments also cite other evidence of consumer acceptance of prerecorded healthcare calls. One asserts that low opt-out rates show consumer approval,[336] as does the percentage of consumers who respond to healthcare messages left on answering machines or with another household member.[337] The comment adds that interaction rates also demonstrate consumer acceptance of automated healthcare calls, noting that the percentage of recipients who answer and respond to the first question without hanging up ''typically exceeds 75%,'' whereas ''interaction rates for other calls are much lower, 17% for financial services and 2% interaction rate for utility services.''[338] Other comments point to affirmative patient action as evidence of acceptance of prerecorded healthcare calls. One reports that in its 4 million calls annually to 500,000 clients for prescription refills or medical supply reorders, ''better than 50%'' have reordered on average, and reorders have sometimes ''exceeded 67%,'' with fewer ''than 1% complaints'' about the calls, and ''very few'' opt-out requests.[339]

The exemption advocates also argue that there is no justification for application of the proposed amendment to healthcare-related calls, because the benefits of healthcare calls ''far outweigh any intrusion on privacy interests.''[340] One comment adds that given the potential civil and criminal penalties for violations of the restrictions on healthcare related calls, patients will be protected from abusive marketing calls, and that consequently there is no need for the additional protection of the proposed amendment.[341]

b. Discussion and Conclusion

As the comments make clear, in addition to generating demonstrable improvements in patient outcomes, the use of inexpensive prerecorded calls plays an important cost-containment role in the provision of medical services, many of them publicly funded, and in facilitating the record-keeping that governmental healthcare reimbursement regulations require. Requiring the prior written agreement of patients to receive prerecorded calls subject to HIPAA quite obviously could burden or jeopardize the improved medical outcomes that such calls have made possible by enabling healthcare providers to achieve higher rates of patient compliance with treatment regimens at low cost. Government Accountability Office reports and other studies have shown that the prior low rates of patient compliance contributed to significantly higher than necessary national healthcare costs because they resulted in increased hospitalizations, morbidity and mortality rates.[342] Quite apart from the risk that some patients might decline to agree to receive such calls, requiring written agreements from current patients would be inconsistent with the healthcare system's cost-containment mandate.

The Commission has given careful consideration to the possibility of exempting healthcare calls from the express written agreement requirement of the amendment, while requiring that they comply with its opt-out provisions. The difficulty with such a partial exemption in the healthcare context, as some of the commenters argue, is that a partial exemption may create a health or safety risk. The patients who most need healthcare calls may be confused as a result of age or other health-related conditions, and might opt out of the calls, thereby preventing their healthcare provider from contacting them even with a live call to check on their condition without violating the TSR. For this reason, the Commission is persuaded that a complete exemption from the amendment for healthcare-related calls is necessary.

[328] Silverlink/Eliza at 2; *see also* Silverlink /Eliza Corp., Petition Requesting That the FTC Maintain its Current Enforcement Policy Permitting the Use of Prerecorded Messages (When There Is an Established Business Relationship) for the Narrow Subset of Health-Related Calls Made by Entities Regulated under HIPAA (''Silverlink Petition''), *available at* (*http://www.ftc.gov/os/comments/telemarketingrulefees/061130ftcPetition.pdf*), at 6 n.14; *cf.* Access at 5 (elderly and chronically ill patients not likely to respond quickly to request for written permission for use of prerecorded messages).

[329] Silverlink/Eliza at 3.

[330] Silverlink/Eliza at 3–4, 6; medSage at 5; *see also* Silverlink Petition at 6–7.

[331] Silverlink/Eliza at 8, 11; Access at 7, 9–10.

[332] *See* note 86, *supra*, and accompanying text.

[333] Silverlink Survey at 5.

[334] Silverlink/Eliza at 7–8 & n.4; Access at 8.

[335] Silverlink Survey at 1. *See* 68 FR 4580, 4593 (Jan. 29, 2003) (40 percent of consumers who commented favored an EBR exemption to the TSR).

[336] Silverlink/Eliza at 8 (noting that only 50 of 140,000 patients who received an automated prescription refill call opted out, and that only 10 of 60,000 Medicaid members who received an automated interactive call opted out); Silverlink Petition at 7 (reporting that only 25 of 100,000 Medicaid members who received interactive automated calls opted out). Because it is not clear when or whether an opt-out option was provided in these calls, and the number of live answers is not provided, the Commission does not rely on this and similar reports of low rates of complaints and opt-outs for healthcare calls.

[337] Silverlink/Eliza at 8 (citing a 20 percent response rate).

[338] *Id.* at 7.

[339] PMSI–Tmesys at 1–2. *See also* CenterPost at 1 (reporting that ''66–82% of customers renew a policy or prescription in an automated call''); *cf.* PolyMedica at 2 (asserting that its interactive calls are ''generally welcomed by patients'' and noting that of its 913,000 patients, 25,000 refilled prescriptions in response to interactive calls in November 2006, and that it expected an additional 29,000 to do so in December 2006).

[340] Silverlink/Eliza at 12; medSage at 6–7.

[341] medSage at 4. In addition, one request argues that the Commission provided inadequate notice of the proposed amendment to the healthcare industry, and that the rulemaking should be reopened so that their requests can be considered, if an exemption is not granted. Silverlink/Eliza at 12–13.

[342] *See* notes 329–330, *supra*, and accompanying text.

Significantly, unlike other telemarketing calls, the number of healthcare-related calls subject to HIPAA is limited by the nature of the calls, depends on the patient's health and medical condition, and would not expose consumers to an unlimited number of sellers seeking to generate sales.[343] For healthy consumers, the calls would be limited to infrequent annual reminders of check-ups, immunizations, or health screenings. For consumers with a medical condition, the calls would continue periodically only for so long as prescribed medicine, medical equipment or supplies, or home healthcare follow-up continue to be medically necessary.[344] In either case, the calls would come from a limited number of providers, and would be limited in their frequency by the medical needs of the patient.

In summary, the Commission has determined to exempt healthcare-related prerecorded message calls subject to HIPAA from the prerecorded call amendment. This determination is based on six primary considerations, first among them the fact that delivery of healthcare-related prerecorded calls subject to HIPAA already is regulated extensively at the federal level. Second, coverage of such calls by the amendment could frustrate the Congressional intent embodied in HIPAA, as well as other federal statutes governing healthcare-related programs. The third basis for the exemption is that the number of healthcare providers who might call a patient is inherently quite limited—as is the scope of the resulting potential privacy infringement—in sharp contrast to the virtually limitless number of businesses conducting commercial telemarketing campaigns. Fourth, there is no incentive, and no likely medical basis, for providers who place healthcare-related prerecorded calls to attempt to boost sales through an ever-increasing frequency or volume of calls. Fifth, the existing record does not persuade the Commission that it should find that ''the reasonable consumer'' would consider prerecorded healthcare calls coercive or abusive.[345] Finally, FTC law enforcement experience does not suggest that healthcare-related calls have been the focus of the type of privacy abuses the amendment is intended to remedy. For these reasons, the Commission has determined, pursuant to both its authority under the Telemarketing Act and its authority under the FTC Act, that healthcare-related prerecorded message calls subject to HIPAA should be exempt, because application of the amendment to such calls ''is not necessary to prevent the unfair or deceptive act or practice [that harms consumer privacy] to which the [amendment] relates.''[346]

Accordingly, the Commission has exempted from the requirements of 16 CFR 310.4(b)(1)(v) any outbound telephone call that delivers a prerecorded healthcare message made by, or on behalf of, a covered entity or its business associate, as those terms are defined in the HIPAA Privacy Rule, 45 CFR 160.103.[347]

3. Exemption for Calls Made by For-Profit Telemarketers to Deliver Prerecorded Charitable Solicitation Messages on Behalf of Non-Profit Organizations

Concerned that for-profit telemarketers using prerecorded messages to solicit contributions on behalf of non-profit charities otherwise would be subject to the requirements of the amendment, when prerecorded message calls placed by the charities themselves are not covered because the Commission lacks jurisdiction over non-profit entities, DMA and Heritage urge that such calls be exempted.[348]

a. Comments Advocating an Exemption

Both commenters who address this issue seek, at a minimum, an exemption for such calls made to those with whom the charity has an existing relationship, ''which in most cases would include donors or members of [the] charity.''[349] They also argue that the Commission should go further, and grant for-profit telemarketers a blanket exemption from any of the requirements of the amendment when soliciting charitable contributions.

DMA emphasizes that analogous FCC regulations implementing the TCPA permit the use of prerecorded message calls without the called party's consent when a call is made ''by or on behalf of a tax-exempt nonprofit organization.''[350] DMA further notes that:

> The Commission has crafted different rules in the Do Not Call area in the past for

[343] An argument could be made that Congress did not intend DME suppliers in particular, and perhaps healthcare providers in general, to be subject to the Telemarketing Act, because the restrictions on telephone solicitations by DME suppliers in 42 USC 1395m(a)(17)(A), which include an exemption similar to an EBR, were added to the Social Security Act on October 31, 1994, just over two months after passage of the Telemarketing Act on August 16, 1994. Pub. L. No. 103–432 § 132(a). Because DME suppliers, like other healthcare providers, are subject to the HIPAA Privacy Rule, an exemption based on that Rule will also exempt DME suppliers.

[344] The exemption would not apply to sales of over-the-counter medications and dietary supplements unless prescribed by a covered entity as part of a plan of treatment.

[345] The record contains survey evidence indicating that some 45 percent of consumers ''would like'' or ''would not mind,'' getting prerecorded healthcare calls. Silverlink Survey, Attach. A, at 2. A separate survey question demonstrates that consumers are much less willing to listen to pure sales calls than to health-related calls: When asked how willing they were to listen to different kinds of prerecorded calls, 34 percent rated their willingness to listen to prerecorded health calls at ''4'' or ''5''on a 5-point scale, compared to only 3 percent who were equally willing to listen to calls for discounted rate credit cards, and only 5 percent to discount vacation package calls. *Id.*, Attach. A, at 3 (using a 5-point scale with ''5'' being the most willing). This evidence is confounded by the fact that the survey also shows that 12 percent of consumers would be ''upset'' if they received a prerecorded call from their healthcare company, and that an additional 29 percent would ''prefer not to be contacted in this way.'' *Id.*, Attach. A, at 2. Nonetheless, considering all of the evidence, the Commission is not persuaded that it should find that ''the reasonable consumer would consider [such calls] coercive or abusive of such consumer's right to privacy.'' 15 USC 6102(a)(3)(A). Absent such a finding, the Commission lacks authority under the Telemarketing Act to apply the prerecorded call amendment to healthcare-related calls governed by the HIPAA Privacy Rule.

[346] 15 USC 57a(g)(2). *See* note 298, *supra*.

[347] Because the amendment makes explicit the prohibition against such prerecorded messages that is implicit in 16 CFR 310.4(b)(1)(iv), the effect of the exemption is also to shield calls within the scope of the exemption from violation of that provision.

[348] The Commission notes that prior to this amendment, for-profit telemarketers calling to solicit charitable contributions on behalf of non-profit organizations—like telemarketers placing sales calls—have been subject to the TSR's call abandonment prohibition, which prohibits the use of prerecorded messages in all calls answered in person by a consumer (except the 3 percent permitted under the call abandonment safe harbor). For-profit telemarketers calling to solicit charitable contributions on behalf of non-profit organizations could not use prerecorded messages pursuant to the non-enforcement policy, announced in November 2004, because that policy was limited to prerecorded message calls placed to consumers with whom a *seller* had an EBR. An EBR, by definition, is based on a commercial transaction, not a charitable contribution. Thus, as compared to the status quo, this amendment substantially reduces restrictions on for-profit telemarketers that make calls to solicit charitable contributions on behalf of non-profit organizations.

[349] DMA at 6,7; *see* Heritage, No. 581, at 2. As indicated in note 334, *supra*, the TSR's defined term, ''established business relationship,'' 16 CFR 410.2(n), has no applicability to charitable solicitations or the activities of those who perform them. Rather, the term establishes the parameters of an exemption to the Do Not Call Registry provisions, which reach neither charities nor the for-profit telemarketers that place solicitation calls on their behalf. *See* 16 CFR 310.6(a) (''Solicitations to induce charitable contributions via outbound telephone calls are not covered by §310.4(b)(1)(iii)(B) [the Do Not Call Registry provisions] of this Rule''). Where commenters use the term ''established business relationship'' in the context of charitable solicitations, the Commission interprets it to mean ''previous donors to or members of the non-profit charitable organization.'' The Commission construes ''members'' broadly to include volunteers, whether or not they have a formal membership in the charity. *See* 68 FR at 4634 & n.660.

[350] DMA at 6, *citing* 47 CFR 64.1200(a)(2)(v).

charities, and should continue to recognize the enhanced First Amendment protections given to charitable speech and the lower concern for abuse. . . . [T]he Commission [should] exclude calls made to induce a charitable contribution from the scope of the [contemplated amendment] . . . . This would afford charities the same right to contact donors as they were afforded by Congress under the TCPA.[351]

Similarly, Heritage asserts that under relevant Supreme Court decisions ''charities enjoy protected free speech rights beyond that provided to commercial speech.'' Heritage also asserts that restrictions on for-profit telefunders will not enhance consumer privacy because these restrictions, due to limits on the FTC's jurisdiction, cannot reach non-profit charities that own and operate their own equipment for making calls that deliver prerecorded fundraising messages.[352]

b. Discussion and Conclusion

The Commission has given careful consideration to the impact of the prerecorded call amendment on charities that use for-profit telefunders to solicit contributions. It has also given careful consideration to the impact on the privacy of potential donors in their homes.

It is important to note at the outset that there is a significant factual difference between this exemption request and the exemption for prerecorded healthcare-related calls governed by the HIPAA Privacy Rule that bears directly on the governmental interest in protecting the privacy of consumers in their homes. As previously noted, the number of healthcare calls is inherently limited by the fact that HIPAA regulations specify that ''marketing'' calls unrelated to medical treatment can only be made with the prior consent of the patient, and permit periodic treatment-related calls only by the patient's healthcare provider and its business associates. The limited number and frequency of potential healthcare calls governed by HIPAA stands in sharp contrast to the large number of charities that inevitably compete with each other for donations, and the tide of low-cost prerecorded charitable solicitation calls consumers would likely receive from telefunders.[353] Thus, while coverage under these amendments of prerecorded healthcare message calls governed by the HIPAA Privacy Rule is not necessary to prevent the acts or practices to which the amendment relates, the same cannot be said for prerecorded message calls placed by for-profit telemarketers to solicit charitable contributions on behalf of non-profit organizations.

The challenge for the Commission is to achieve the appropriate balance between the strongly-protected right of non-profit organizations to reach donors through telefunding, and the privacy rights of those potential donors to be free, in their own homes, of prerecorded message calls that they do not want. To achieve what it believes is the best balance in this regard, the Commission has decided to permit telefunders to place prerecorded messages calls to those with whom the charity has an existing relationship—*i.e.*, members of, or previous donors to the non-profit organization on whose behalf the calls are made—without first obtaining the call recipients' consent, so long as the messages enable the recipients of the calls to opt out from the calls they do not wish to continue to receive.[354]

Balancing the competing bedrock rights at issue must be achieved within the framework of relevant First Amendment principles. As the Commission noted in the SBP for the Amended Rule, the framework for First Amendment analysis is more stringent with respect to telemarketing that solicits charitable contributions than it is for commercial telemarketing for the purpose of inducing purchases of goods or services.[355]

The analytical framework for determining the constitutionality of a regulation of commercial speech that is not misleading and does not otherwise involve illegal activity is set forth in *Central Hudson Gas & Elec. v. Pub Serv. Comm. of N.Y.*[356] Under that framework, the regulation (1) must serve a substantial governmental interest; (2) must directly advance this interest; and (3) may extend only as far as the interest it serves[357]—that is, there must be ''a 'fit' between the legislative ends and the means chosen to accomplish those ends . . . a fit that is not necessarily perfect, but reasonable . . . that employs not necessarily the least restrictive means but . . . a means narrowly tailored to achieve the desired objective.''[358]

With regard to the first of these criteria, protecting the privacy of consumers from unwanted commercial telemarketing calls delivering prerecorded messages is a substantial governmental interest. ''Individuals are not required to welcome unwanted speech into their own homes and the government may protect this freedom.''[359]The amendment is designed to advance the privacy rights of consumers by providing them with an effective way to limit prerecorded message calls, and to make known to sellers their wishes not to receive such calls. The amendment requires consumers' prior agreement to receive prerecorded calls, and must provide an interactive opt-out mechanism at the outset of the message to enable a call recipient to withdraw consent and avoid receiving any more prerecorded calls. Thus, the amendment directly advances the privacy interest at issue, and the second *Central Hudson* criterion is met. Finally, with respect to the third criterion, the prerecorded message amendment comprises a mechanism closely and exclusively fitted to the purpose of protecting consumers from prerecorded telemarketing calls that a reasonable consumer would find abusive of his or her privacy.

In considering the more stringent analysis that pertains to charitable fundraising, the Commission notes, preliminarily, that application of the prerecorded message amendment to charitable solicitation telemarketing would be content-neutral. ''Laws that confer benefits or impose burdens on speech without reference to the ideas or views expressed are in most instances content neutral.''[360] The prerecorded message amendment applies equally to all for-profit solicitors, regardless of whether they are seeking sales of goods or services or charitable contributions, and regardless of what may be expressed in the solicitation calls themselves or the viewpoints of the organizations on whose behalf the solicitation calls are made.

[351] DMA at 7.

[352] Heritage at 2.

[353] The Combined Federal Campaign of the National Capital Area (''CFCNCA'') alone supported more than 3,400 local, national and international charities in 2006–2007. *See* CFCNCA, Stewardship Report to the Federal Community 2006–2007, p.4, *available at* (*http://www.cfcnca.org/?pastcampaignresults*).

[354] This means that telefunders would be covered by subparagraph (B) of the amendment, but not subparagraph (A).

[355] 68 FR 4636 (Jan. 29, 2003).

[356] 447 U.S. 557 (1980).

[357] *Id.* at 566.

[358] *Bd. of Trs. of State Univ. of N.Y. v. Fox*, 492 U.S. 469, 480 (1989).

[359] *Frisby v. Schultz,* 487 US 474, 485 (1988).

[360] *Turner Broad. Sys., Inc. v. FCC,* 512 U.S. 622, 648 (1994). ''[R]egulations that are unrelated to the content of speech are subject to an intermediate level of scrutiny because in most cases they pose a less substantial risk of excising certain ideas or viewpoints from the public dialogue.'' *Turner* at 642, *citingClark v. Cmty. for Creative Non-Violence*, 468 U.S. 288, 293 (1984). *See also Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) (''[The] principal inquiry in determining content neutrality is whether the government has adopted a regulation of speech because of disagreement with the message it conveys''). *See also Am. Target Adver. v. Giani,* 199 F.3d 1241 (10th Cir.), *cert. denied*, 531 U.S. 811 (2000) (applying this principle in the context of solicitation).

As in the case of commercial speech, the analysis applicable to charitable solicitations also inquires into the nature of the governmental interest that the regulation seeks to advance. The case law indicates that with respect to the higher level of scrutiny applicable to charitable solicitations, privacy protection is a sufficiently strong governmental interest to support a regulation that touches on protected speech.[361] However, the case law also indicates that, in the case of charitable solicitation, greater care must be taken to ensure that the governmental interest is actually advanced by the regulatory remedy, and that the regulation is tailored narrowly so as to minimize its impact on First Amendment rights. In *Riley* v. *Nat'l Fed. of the Blind,*[362] and *Schaumburg* v. *Citizens for Better Env't*,[363] the Court rigorously examined laws that regulated the percentage of charitable contributions raised by a professional fundraiser that could be retained as the fundraiser's fee. The Court struck down the laws because there was, in the Court's view, at best an extremely tenuous correlation between charity fraud and the percentage of funds paid as a professional fundraiser's fee; the laws therefore were unlikely to achieve their intended purposes of preventing fraud and protecting charities. The Court also found that these laws were not drawn narrowly enough to minimize the impact on the charities' First Amendment rights.

In contrast, a close nexus exists between the government's legitimate interest in protecting consumers' privacy from unwanted prerecorded telemarketing calls from telefunders and the requirement that such calls give call recipients an opportunity to opt out. This nexus does not rely on an attenuated theoretical connection between fraud and the percentage of funds raised that a telefunder may take as its fee. Rather, there is a direct correlation between the governmental interest and the regulatory means employed to advance that interest: The consumer indicates his or her preference not to receive such a call again, and the regulation requires the telefunder to record and honor that request in the future.

As noted in the SBP for the Amended TSR, the Commission approaches with extreme care the issue of tailoring the TSR privacy provisions narrowly to advance the Commission's legitimate governmental interest, yet minimize the impact on the First Amendment rights of charitable organizations and the for-profit telemarketers who solicit on their behalf.[364] The Commission is concerned that subjecting charitable solicitation telemarketing to the same prior written agreement requirement that applies to commercial telemarketing for the purpose of soliciting sales of goods and services may sweep too broadly, and inadvertently act as an impermissible prior restraint, given the difficulties charitable organizations say they have in securing donors' agreements to receive charitable solicitation calls.[365]

After careful consideration, the Commission has determined that the best approach to achieve a narrow tailoring of the prerecorded message amendment is to exempt solicitations by telefunders to induce charitable contributions via outbound telephone calls from the prior written agreement requirement of the amendment, and instead require only that such calls, like charitable solicitation calls that are placed by live representatives, enable the recipients of the calls to opt out of receiving such calls in the future, if they so desire.

Limiting telefunders' use of prerecorded messages to those calls placed to members of, or previous donors to, the non-profit organization on whose behalf the calls are placed serves two important purposes. First, it will prevent a likely tide of low-cost charitable solicitation calls to potential donors made by telefunders on behalf of a virtually infinite array of non-profit organizations seeking to boost donations. There are consumer complaints about charitable solicitations in the record,[366] and the record suggests—and common sense confirms—that the abuse of consumer privacy intensifies as the number and frequency of telemarketing calls, including prerecorded calls, increases. Second, there is evidence in the record that the abuse of consumer privacy is greatly compounded by prerecorded calls from entities with which consumers have no prior relationship. Permitting telefunders to make impersonal prerecorded cold calls on behalf of charities that have no prior relationship with the call recipients, therefore, would defeat the amendment's purpose of protecting consumers' privacy.[367] Thus, permitting the use of prerecorded messages to calls made by telefunders to members of, or previous donors to, a charitable organization is a limiting principle that makes good practical and policy sense. This is an alternative supported by the two industry commenters who addressed the issue of an exemption for charitable solicitation calls.

The Commission notes that the provision requiring for-profit telefunders to honor entity-specific Do Not Call requests, which this amendment implements for prerecorded calls, has been challenged and upheld.[368] It is instructive to note that, in analyzing whether this provision is tailored narrowly enough to pass First Amendment scrutiny, the Fourth Circuit compared the TSR's regulatory scheme to a federal statute challenged in *Rowan* v. *U.S. Post Office Dep't.*[369] That statute empowered a homeowner to bar mailings from specific senders by notifying the Postmaster General that she wished to receive no further mailings from that sender. The Fourth Circuit stated:

> The parallels between the law at issue in *Rowan* and the do-not-call list in this case are unmistakable. If consumers are constitutionally permitted to opt out of receiving mail which can be discarded or ignored, then surely they are permitted to opt out of receiving phone calls that are more likely to disturb their peace. In this way, a do-not-call list is more narrowly tailored to protecting privacy than was the law in *Rowan.*

[361] ''The Village argues that three interests are served by its ordinance: the prevention of fraud, the prevention of crime, and the protection of residents' privacy. We have no difficulty concluding, in light of our precedent, that these are important interests that the village may seek to safeguard through some form of regulation of solicitation activity.'' *Watchtower Bible & Tract Soc'y* v. *Vill. of Stanton,* 536 U.S. 150, 164–65 (2002); *Schaumburg* v. *Citizens for Better Env't*, 444 U.S. 620, 637 (1980) (protecting the public from fraud, crime, and undue annoyance are indeed substantial interests); *Nat'l Fed. of the Blind* v. *FTC,* 420 F.3d 331 (4th Cir.), *cert. denied,* 547 U.S. 1128 (2006) (prevention of fraud and the protection of privacy in the home are sufficiently substantial governmental interests to justify a narrowly tailored regulation).

[362] 487 U.S. 781 (1988).

[363] 444 U.S. 620, 637 (1980).

[364] 68 FR 4636 (Jan. 30, 2003).

[365] The Commission notes that, in a slightly different context, non-profit organizations uniformly condemned a proposal in the NPRM for the Amended TSR that they would be able to obtain consent to place charitable solicitation calls to persons who had placed their phone numbers on the National Do Not Call Registry and thereby preserve their right to call those persons. Non-profit organizations asserted that it would be too costly for them to obtain prospective donors' express permission to call, and too difficult for consumers to exercise their right to hear from them. 68 FR 4636 (Jan. 30, 2003).

[366] *E.g.*, Bashinksy, No. 123, at 1; Harlach, No. 000; Popat, No. 120, at 1; *but see* Maddock, No. 137, at 1–2.

[367] Cold calls prospecting for new donors are also far less likely to induce financial support than calls to prior donors and members. *See* 68 FR at 4634 (citing comments contending that ''it is axiomatic that persons who have already contributed to a nonprofit or charitable organization are much more likely to contribute than are persons who have never done so'').

[368] *Nat'l Fed. of the Blind v. FTC,* 420 F.3d 331 (4th Cir.), *cert. denied,* 547 U.S. 1128 (2006).

[369] 397 U.S. 728 (1970).

Moreover, this particular restriction seems even more reasonable given the fact that the FTC has only subjected telefunders to a charity specific list. Under this procedure, a consumer cannot report to a central authority that he wishes not to be called by any telemarketers generally; he must instead repeat his request as to each caller individually. This charity-specific alternative to a national list is an option that the *Mainstream Marketing* court called ''extremely burdensome to consumers.'' 358 F.3d at 1244. In light of this, we have no trouble finding the charity-specific restriction on speech to be a permissibly narrow means of protecting the home environment.[370]

The purpose and effect of this exemption is to allow for-profit telefunders to make use of prerecorded messages while maintaining the Rule's privacy protections for consumers. The amendment ensures the same privacy protection for recipients of prerecorded message calls soliciting a charitable contribution that the Rule currently affords recipients of calls from live representatives soliciting a charitable contribution.[371] To paraphrase the Fourth Circuit, if consumers are constitutionally permitted to opt out of receiving phone calls from live telefunding representatives, then surely they are permitted to opt out of receiving calls that are more likely to disturb their peace because they deliver no live human voice, but only a prerecorded message.

Accordingly, the Commission has modified the prerecorded call amendment to make it clear that only the opt-out requirements in 16 CFR 310.4(b)(1)(v)(B) apply to prerecorded calls ''to induce a charitable contribution from a member of, or previous donor to, a non-profit charitable organization on whose behalf the call is made.''

## III. Proposed Abandoned Call Measurement Standard Revision

The second proposed amendment would revise the TSR's standard for measuring the permissible call abandonment rate. Section 310.4(b)(4)(i) of the TSR now requires that a seller or telemarketer employ ''technology that ensures abandonment of no more than three (3) percent of all calls answered by a person, measured *per day per calling campaign*.''[372] The proposed amendment would revise the standard to permit sellers and telemarketers to measure the abandonment rate ''*over the duration of a single calling campaign, if less than 30 days, or separately over each successive 30-day period or portion thereof that the campaign continues*.''[373]

The Commission proposed the revision because the ''record shows that particular problems arise in connection with the use of smaller, segmented lists that are the most economical for small businesses and the most useful in targeting only those consumers most likely to be interested in a particular sales offer.''[374] This occurs because the predictive dialers used to place live telemarketing calls use statistical projections, based on continuous sampling of the number of calls that are answered in person, to determine the rate at which to place calls for the sales representatives that are available to take them. As with all such statistical models, small samples produce large standard deviations, a fact which manifests itself, in the case of predictive dialers, in decreased accuracy for smaller calling lists and unexpected spikes in call abandonment rates. Consequently, the current ''per day per calling campaign'' call abandonment standard effectively precludes the use of predictive dialers with smaller calling lists because of the likelihood that call abandonments will exceed the three percent daily maximum permitted.

Some 144 consumers, 9 consumer advocates, and 12 industry members and trade associations commented on the proposed amendment. All of the consumer advocacy comments and nearly all of the individual consumer comments oppose any change that might increase the number of abandoned calls consumers receive, with many consumers insisting that all abandoned calls are ''abusive'' and should be prohibited. The industry comments generally applaud the proposed amendment, but most argue that its ''per campaign'' limitation still makes it unduly restrictive compared to the FCC standard, which permits telemarketers to compute a single abandonment rate for all the campaigns they conduct during a 30-day period.[375]

### *A. Consumer Comments*

All of the comments from consumer advocates oppose the proposed amendment, as do nearly all of the individual consumers who refer to it, most of whom specifically object to ''abandoned'' or ''dead air'' calls.[376] Twelve consumer comments ask in particular that the present ''3 percent per day'' standard be retained,[377] while only four clearly voice any support for the proposed amendment.[378]

The consumer advocates and individual consumers make five basic arguments against the proposed amendment: (1) Abandoned calls are harassing and an invasion of privacy; (2) Abandoned calls should be banned to protect consumers; (3) Any change in the current standard will further harm consumers; (4) The record does not support any change in the current standard; and (5) The ''per campaign'' standard should be retained.

#### 1. Abandoned Calls are Harassing and an Invasion of Privacy

More than 35 consumers say abandoned calls are ''annoying.''[379]

[370] *Nat'l Fed. of the Blind v. FTC,* 420 F.3d at 342.

[371] With respect to the underinclusiveness objections raised by both DMA and Heritage to the effect that the amendment's coverage only of for-profit telefunding, but not telephonic fundraising conducted in-house by non-profit organizations, the Commission notes that the Fourth Circuit, in *Nat'l Fed. of the Blind*, held that:

When an agency regulates to the extent of its jurisdiction it will unavoidably leave out some speakers and some speech that is beyond its authority to regulate. But, in such circumstances, the danger of governmental overreaching—which cases such as *Discovery Network* aim to prevent—is removed. Unlike in those cases, here it does not make sense to see this unavoidable distinction as a red flag indicating First Amendment problems. Any underinclusiveness that appellants have identified is not the result of the FTC attempting to favor one side of a public debate over another, or pursuing an illegitimate governmental interest, or not genuinely serving the interest it purports to seek. Rather, such underinclusiveness results from the simple fact that the PATRIOT Act designated ''charitable solicitations'' as being within the type of behavior the FTC could regulate, but it left speech by charities outside the agency's jurisdiction.

The agency's jurisdictional boundary, therefore, serves as the 'neutral justification' for the distinction that was missing in Discovery Network. While plaintiffs complain that the regulation also fails to cover some commercial, political, and intrastate speech, this fact too is explained by the FTC's assiduous attention to its own jurisdiction.

420 F.3d at 348 (citations omitted).

[372] 16 CFR 310.4(b)(4)(i) (emphasis added).

[373] 71 FR at 58734 (emphasis added).

[374] 71 FR at 58730.

[375] 47 CFR 64.1200(a)(6) (Prohibiting abandonment ''of all telemarketing calls that are answered live by a person, measured over a 30 day period'').

[376] Six of the comments refer to calls that are ''auto-dialed,'' ''auto call,'' ''computer generated,''or ''machine calls,'' Eng, No. 277; Schell, No. 430; Herman, No. 305; Reeves, No. 355; Block, No. 226; Anderson, No. 395; and two cite ''automatic dialers'' or ''automated systems.'' Griffiths, No. 319; Warsaw, No. 388. One objects to ''any expansion in the rights of telemarketers to call my phone numbers,'' Bergman, No. 302, and another considers ''the proposed amendments to be vital'' but does not ''wish to be disturbed.'' Murphy, No. 332.

[377] *E.g.*, Chastain, No. 518; Hamilton, No. 219; Ryan, No. 645; Woods, No. 328; ; *but see* Parlante, No. 216 (would prefer only ''1% per day'').

[378] Bashinski, No. 123, at 1; Byrne, No. 158, at 2; Popat, No. 120, at 3; McDaniel, No. 557; *cf.* Dunlop, No. 118, at 3 (''The rule should be amended to allow a four or five percent dropped call rate 'per day' instead of three percent 'per 30 days'''').

[379] *E.g.,* Bernardy, No. 307 (''[T]here is NOTHING more annoying than running to the phone and finding dead air !!! I detest these calls'') (emphasis in original); Sanders (It is ''very annoying'' when

Continued

Others find them ''frustrating,''[380] ''irritating,''[381] and a ''nuisance.''[382] Ten cite the inconvenience of being interrupted in what they are doing for no reason,[383] be it working outside,[384] sitting in a comfortable chair to read or relax,[385] or preparing or eating a meal.[386] Several consumers say they consider the repeated interruptions of their home life by abandoned calls a form of harassment.[387] While two consumers say they have learned to cope with abandoned calls by screening calls before they answer them,[388] several say, like PRC, that they consider abandoned calls an invasion or violation of their right to privacy in their home.[389]

2. Abandoned Calls Should Be Banned To Protect Consumers

One consumer advocacy group and at least 14 individual consumers assert that ''the only acceptable rate for abandoned or dead-air calls is a zero tolerance.''[390] Similarly, NCL's joint comment for itself and six other consumer advocacy groups, as well as several comments from individual consumers, contend that the only ''acceptable level for abandoned calls is zero.''[391] PRC argues that abandoned calls should be banned completely because ''any tolerance for 'dead-air' calls denies consumers the opportunity to complain about abusive calls'' for the simple reason that ''[e]ven when the consumer's phone has Caller ID, the display usually shows only 'private caller' or 'out of area.'''[392] Six consumer comments confirm that they have no way to identify the source of the abandoned calls they receive, and therefore ''no way of knowing what company to call to have the calls stop.''[393]

NCL adds two additional justifications for a total ban. The first is that, ''[u]nlike airlines, which are permitted to overbook but must then compensate consumers for being bumped, consumers receive no compensation for being subjected to abandoned calls.''[394] NCL's second rationale is that abandoned calls cause ''anger and fear among a certain percentage of consumers for the sake of commercial efficiency,'' and ''this is not a fair trade-off.''[395]

3. Any Change in the Current Standard Will Further Harm Consumers

Both AARP and PRC stress the fear abandoned calls create for consumers as a ground for their opposition to the proposed amendment. AARP and several consumer comments point out that ''[f]or mid-life and older Americans these calls are more than just a nuisance,'' because ''[i]n addition to the inconvenience and risk associated with rushing to answer the telephone, there is the uncertainty and concern for the consumer, especially for women living alone.''[396] PRC adds that receiving an abandoned call ''needlessly increases anxiety for stalking victims'' and for ''[c]onsumers whose homes have been burglarized or who live in a neighborhood where home burglaries have occurred.''[397] A comment from a police detective attests that ''[o]ur residents who get numerous hang-ups (dead air calls) make police reports thinking these are from a 'specific' person who is harassing them,'' and that ''these calls create additional work for law enforcement throughout the country as well as create a harmful atmosphere for the receiving person.''[398]

PRC also asserts that the proposed amendment ''does nothing to promote consumer interests.''[399] The Connecticut Attorney General agrees, opposing the proposed amendment both because abandoned calls ''represent a substantial intrusion into consumers' lives'' and because ''the telemarketing industry's comments acknowledge that it can

''[y]ou rush to the phone and it's a recording or no one is there''); Steep, No. 422 (''Dead air' calls'' are ''particularly'' annoying); *see also, e.g.,* Anderson, No. 354; Brown, No. 350; Donohue, No. 300; Kelm, No. 271; Paradise, No. 241; No. 415; Redwine, No. 324.

[380] Adams, No. 169 (''I cannot tell you how frustrating it is to pick up the phone after it has rang two times only to hear a 'click' on the other end''); Fulleylove-Krause, No. 423.

[381] Churchwell, No.381(''Nothing is more irritating than to pick up the phone and no one is on the other end''); Roberson, No. 264 (I ''want to be protected from . . . those automatic calls that have no message, just silence. Those are just as irritating and unwanted''); Shell, No. 430; *cf.* Lindo, No. 310 (''I despise the 'dead' telephone line that results from call abandonment''); Saloiye, No. 554(''[V]ery aggravated by calls'' where ''no one is on the line'').

[382] Griffith, No. 524 (''Abandoned calls are a great nuisance and should be strictly prohibited''); Gwinn, No. 553 (''Abandoned calls are a major nuisance''); Lilly, No. 522; *cf.* Haddox, No. 549 (''I find it such a waste of my time—especially when no one is on the end of the line'').

[383] Aston, No. 551 (''Rushing to answer the phone only to find nobody there constitutes an unacceptable interruption as well as a waste of the victim's valuable time''); Gwinn, No. 553 (''I quit what I am doing—go to the phone—and silence! I see no justification for that annoying business practice''); Sawyer, No. 517 (''This allowance [for call abandonment] simply enables telemarketers to do the damage of interrupting what I am doing'').

[384] Flanagan, No. 347 (''As a farm family dead air time is a real problem when working outside. You dash in the barn thinking it is the tractor dealer and you get this dead air phone call''); Schmidt, No. 450 (''I want this to stop, as many times I am busy outside, and must run in to a dead phone'').

[385] Fielding, No. 267 (''The 'do not call' concept becomes a joke when companies are allowed to call and make you get up from your reading chair to answer a non-existent phone call''); Hall, No. 618 (''I don't want to get out of my chair every 10 minutes to answer'' telemarketers' ''dead silence computer calls'').

[386] Adams, No. 321 (''I race to answer the phone and there's no one there. It undoubtedly happens when I am preparing a meal, or when I have just sat down to enjoy it''); Hooper, No. 331 (''Abandoned calls are especially annoying when I get up from a meal or run from another task to answer the phone and there is no one there'').

[387] Casabona, No. 559 (''The use of equipment to dial more numbers than the telemarketers can possibly answer amounts to harassment. This practice is worse than a prankster ringing your line constantly and then hanging up when you answer''); Steans, No. 351 (''It's like being harassed in your own home.'') Citizen, No. 396 ( I consider them [abandoned calls] a form of harassment, and you should too''); Burr, No. 211; Leuba, No. 466; *see* Harlach, No. 000 (''Telemarketers ''hang up leaving no message at all, only to call again the same day; sometimes within the same hour'').

[388] Swafford, No. 521 (using Caller ID); Wagner, No. 353 (using an answering machine).

[389] PRC at 4; *see also, e.g.,* Budnitz, No. 282; Hockaday, No. 255; Miller, No. 528.

[390] PRC at 4; *see also, e.g.*, Chester, No. 208; McCleery, No. 218; Parlante, No. 216; Snell, No. 210.

[391] NCL at 6; *see also,* Calderon, No. 301; Citizen, No. 396; Smallwood, No. 303; *cf.* Proctor, No. 403 (''I also support tightening of the method for measuring the maximum allowable abandonment rate''); Young, No. 330 (''Please STRENGTHEN rather than weaken any regulations about . . . methods for measuring the maximum allowable call abandonment rate'') (emphasis in original); Casabona, No. 559 (''Computer dialing of numbers for telemarketers who cannot possibly attend to them should be banned''); Warsaw, No. 388 (''I would like these systems banned and be considered wire fraud upon the public'').

[392] PRC at 4 (Contending that ''[w]ithout the FTC's ability to conduct compliance audits and without consumers' ability to complain, the only enforcement mechanism is a telemarketer's requirement to keep records of abandoned call rates,'' and that measures to ensure more effective enforcement should be pursued, ''either through rulemaking or, if appropriate, seeking an amendment to the law itself'').

[393] Cooper, No. 285; *accord*, Palicki, No. 260 (Police detective attesting that when consumers attempt to obtain the numbers from which abandoned calls are placed, they ''show out of area''); Strang, No. 189, at 4–5 (citing calls to ''my residential phone line'' where ''the majority of the 'hangup' calls'' provided ''no Caller ID information as required by FCC rules''); Kostenko, No. 417; Sawyer, No. 517; Warsaw, No. 388.

[394] NCL at 6; *see* Gorman, No. 387 (''Now they want to increase the Abandon Rate of their calls? They should not be calling us anyway unless they are going to pay for our phone service'').

[395] *Id.* at 7.

[396] AARP at 7; Anderson, No. 354 (''I work with seniors and it makes them feel very uncomfortable''); Baker, No. 201 (''Frequent afternoon and evening dead-air calls are a worry when you are alone as I am''); Hardesty, No. 543 (''I receive at least seven abandoned calls daily at my home. Not only is this a concern for me, but it is a worry for my elderly mother''); Leuba, No. 466 (''At least I hope they were robo calls, there is a possibility that they were predators, looking for a woman at home''); Matulis, No. 410 (''Too many seniors become alarmed when they receive dead air calls''); May, No. 333; *cf.* Johnson, No. 532 (Abandoned calls leave me ''wondering if a family member is in trouble'').

[397] PRC at 4.

[398] Palicki, No. 260.

[399] PRC at 4.

configure dialers to comply with the current standards.''[400] NCL also sees no reason to relax the per-day standard because it ''forces telemarketers to monitor and adjust their use of predictive dialing closely,'' and ''[if] it requires them to switch to manual dialing at times, we think that is a good thing, because manual dialing does not result in abandoned calls.''[401] Moreover, NCL doubts that any change would be a change for the better. NCL observes that ''[i]f changing the standard . . . would actually reduce the number of consumers who receive [abandoned calls], and telemarketers can ensure that certain groups of consumers are not disproportionately subjected to such calls, it might be an improvement over the current situation,'' but notes that it is ''not confident, however, that that will be the result.''[402]

The few consumers willing to contemplate anything but a complete ban on abandoned calls also argue that the 'per day' standard should be retained because it ''limits the numbers of abandoned calls that consumers receive'' compared to the proposed amendment.[403] One argues that the 30-day standard of the proposed amendment ''will inevitably harm consumers'' and ''benefits firms at the expense of consumers.''[404] Another believes that the proposed ''30-day standard . . . makes it too easy for an irresponsible marketer to violate the laws with impunity for a whole month.''[405]

4. The Record Does Not Support Any Change in the Current Standard

PRC further contends that the industry ''has shown no good reason why this [proposed amendment] should be granted or that consumers have anything to gain by changing the calculation.''[406] A consumer comment more specifically argues that the ''industry has not demonstrated a clear and convincing need'' for the change, noting that while the industry's arguments ''are certainly plausible . . . little empirical evidence is offered to support them.''[407] This comment expresses particular doubt about the industry argument that a 30-day standard is necessary to permit the use of small, segmented lists that are most likely to ensure that telemarketing offers are made to the consumers who are most likely to be interested in them. ''Given the consumer response to the prior NPRM,'' the comment observes, ''it seems safe to say that very few telemarketing offers reach interested consumers.''[408]

A second industry rationale, that there is ''no evidence that telemarketers will abuse a 30-day standard,'' is challenged by another consumer comment as ''a nice sound bite'' but one that ''may be lacking in candor.''[409] The comment argues that ''[t]he telemarketing industry is known for bending, and for flat out ignoring, telemarketing rules,'' and that because ''no one has ever studied the problem . . . there is also no evidence to suggest the industry will not abuse a 30-day standard.''[410]

Finally, AARP finds fault with the industry ''argument that consumers can address their concerns [about abandoned calls] by using Caller ID to identify the names of telemarketers abandoning calls to their telephone numbers.''[411] AARP argues that ''[t]his suggested solution incorrectly places the burden and expense on the consumer to remedy this practice,'' and contends that ''consumers who cannot afford the extra cost of a Caller ID service . . . will be unable to check on the identity of an incoming call.''[412]

5. The ''Per Campaign'' Standard Should be Retained

In anticipation of industry arguments to the contrary,[413] the Connecticut Attorney General affirms the importance of the requirement in the amendment, as proposed, that the abandonment ''rate be measured during *each* campaign to reduce potential discriminatory treatment of disfavored groups.'' He argues that ''[a] thirty-day (30) standard, including any and all campaigns, would make less valued consumers the target of a disproportionate share of abandoned calls.''[414] The Attorney General notes that without this ''safeguard, consumers can only rely on the good faith of the industry that it will not engage in such practices, which directly conflicts with its financial incentive to do otherwise.''[415] Several consumer comments concur in this view.[416]

*B. Industry Comments*

Ten telemarketers, trade associations and businesses that use live telemarketing calls submitted comments on the proposed amendment to the current ''per day per calling campaign'' standard for measuring call abandonment. The industry comments are generally supportive of the proposed amendment, but most argue that it does not go far enough, and should eliminate the ''per campaign'' limitation. The comments provide information intended to show that: (1) The current ''per day'' standard inhibits small, targeted campaigns; (2) The continued ''per campaign'' limitation creates compliance issues; and (3) Discriminatory call abandonments need not be a concern.

1. The Current ''Per Day'' Standard Inhibits Small, Targeted Campaigns

All but two of the industry comments support the proposed amendment because it will reduce the costs and enhance the efficiency of live telemarketing.[417] Two of the comments urge the Commission to adopt the proposed amendment in its present form,[418] while the remainder argue that the proposed amendment's ''per campaign'' limitation is unnecessary.

Several of the comments take pains to point out how the current ''per day'' standard for measuring call abandonment rates adversely affects the efficiency of the predictive dialers used in live telemarketing.[419] The comments acknowledge that the Commission is correct in its understanding that the biggest problem arises from ''the limitations of predictive dialers in adjusting to unexpected spikes in

[400] CTAG at 3.

[401] NCL at 7.

[402] *Id.* at 6–7.

[403] Hui, No. 119, at 2

[404] Dunlop, No. 118, at 2, 3.

[405] Byrne, No. 158, at 2.

[406] PRC at 4.

[407] Platt, No. 11, at 1, 2.

[408] *Id.* at 1–2.

[409] Strang, No. 189, at 5–6.

[410] *Id.*

[411] AARP at 7–8.

[412] *Id.* (Noting that ''[p]revious AARP comments have recommended that abandoned calls include some identifying information: calls using predictive dialers should provide a taped message in lieu of hanging up''). In fact, section 310.4(b)(4)(iii) of the TSR's call abandonment safe harbor includes such a requirement. 16 CFR 310.4(b)(4)(iii).

[413] *See* Section III.B.2 *infra.*

[414] CTAG at 3 (emphasis in original).

[415] *Id.* at 4.

[416] Popat, No. 120, at 3 (''[A]veraging the campaigns within a period will lead to an increase in discriminatory abandonment''); Bashinski, No. 123, at 2 (Averaging across all of a telemarketer's campaigns ''would also allow some campaigns to have a much higher rate of call abandonment''); Hui, No. 119, at 2 (''Averaging out across campaigns comes at the expense of at least one group of consumers''); Wang, No. 126, at 3 (''It should not cover all campaigns because this would allow discriminatory treatment of campaigns'').

[417] DMA at 2, 10; ATA at 2; NAA at 4; Verizon at 6; Heritage, No. 80, at 1; Countrywide at 1; Verizon at 2, 6; ccc Interactive at 1; *but see* BoA at 1 (Noting, with approval, ''the Commission's willingness to take an approach similar to that taken by'' the FCC, but not endorsing the proposed amendment); TCIM, at 1 (Recommending only that the FTC adopt the FCC's standard for measuring call abandonment).

[418] Countrywide at 3 (''Countrywide urges the Commission to make this proposed rule change final without any additional amendment''); ccc Interactive at 1.

[419] ATA at 5–7; NAA at 12; Verizon at 3–4; Heritage at 3.

average call abandonment rates.''[420] They confirm that ''if the call abandonment rate is calculated daily, the telemarketer may not have a sufficient amount of time to recover . . ., particularly if one of those spikes occurs near the end of the day.[421]

As two comments note, ''[t]his effect is exacerbated in the case of targeted telemarketing campaigns directed to small groups of consumers'' because ''[b]asic principles of statistics indicate that when the group of consumers to be called is smaller, the deviation from expected answer rates—and expected abandonment rates—is greater.''[422] This adversely affects small businesses such as ''smaller community newspapers'' that are ''hampered the most because their telemarketing universe is small (calling lists less than 5000).''[423] It also impacts larger companies that ''use market research and data research . . . to focus individual telemarketing campaigns on those consumers most likely to be interested.''[424] Such ''segmented'' or ''targeted'' marketing ''means that consumers are most likely to receive those offers that are relevant to them, and less likely to receive telemarketing calls . . . that are not,'' and allows businesses ''to focus on smaller groups of consumers, which lowers marketing costs,'' permitting the cost savings to be ''passed on to consumers in the form of lower prices.''[425]

To ensure compliance with the per day standard, companies conducting such small or targeted campaigns ''may abandon predictive dialers altogether, relying instead on more expensive manual dialing,'' or ''program the dialer with a substantially lower abandonment rate [than 3 percent],'' thereby ''slowing the rate of outgoing calls'' and increasing costs by ''increasing operators' down-time between calls.''[426] These inefficiencies may lead companies to expand their campaigns to larger groups of consumers to minimize the effect of variations in the abandonment rate, with the result that ''consumers receive *more*, rather than fewer, telephone solicitations in which they have no interest.''[427]

One comment also highlights a second effect of the per day standard: that call centers require more telemarketers at the beginning of a calling campaign than toward the end because they ''see a dramatic decrease in contact rates as campaigns continue over time.''[428] This means either that ''management is forced to overstaff on a daily basis,'' or to adjust by ''decreasing staffing to accommodate smaller calling files later in programs.''[429] The problem with the latter approach is that new personnel must be hired and trained at no little cost because of turnover caused by the lack of a steady income. Thus, either strategy required by the per day standard increases costs that ultimately may be passed on to consumers.

The comment points out that small business telemarketers are particularly disadvantaged by the high staffing costs they incur under the ''per day'' standard, and that ''many'' of them ''do not utilize predictive dialers'' for that reason.[430] Unlike large telemarketers that operate several campaigns from a single call center, who can move agents from one calling campaign to another, small telemarketers who run ''relatively few programs and who initiate relatively few telemarketing calls do not have this luxury.''[431] The comment contends that the ''economic reality for relatively small telemarketers will vastly improve'' if the proposed amendment is adopted because they will no longer be burdened by ''significantly higher costs, either in wages or attrition rates.''[432]

2. The Continued ''Per Campaign'' Limitation Creates Compliance Issues

Many of the industry comments urge the Commission to revise the proposed amendment to eliminate the ''per campaign'' limitation retained from the current standard, and permit call abandonment rates to be averaged across multiple campaigns.[433] The industry comments contend that retention of the ''per campaign'' limitation will create several compliance difficulties. First, DMA asserts, without further explanation, that ''[f]or small campaigns, the efficiencies are achieved by allowing one predictive dialer to operate on multiple campaigns with a combined three-percent rate over 30 days.''[434]

Second, DMA notes that the Commission's effort to reduce the obstacles to the use of small, segmented calling lists is impeded by the fact that ''the rule as proposed still requires those small and targeted campaigns that last less than 30 days be calculated over the life of the campaign.''[435] Another comment explains ''that the 'per campaign' limitation will either result in marketers continuing to call on a particular program to solve for an abandonment rate issue, which is inefficient and provides little appreciable consumer benefit, or continuing to use the more restrictive 'per day, per campaign' standard,'' thereby negating the advantage that telemarketing gives a marketer—the ability ''to limit its expenses in campaigns that are producing lower than expected results and [to] move resources to more productive programs very quickly.''[436]

Finally, several comments criticize the use of the term, ''campaign,'' on the ground that it leaves sellers and telemarketers ''uncertain as to whether they are in compliance with the safe harbor'' in the absence of official guidance on its meaning.[437] One comment asserts that ''[i]ndustry members often assign different meanings to the term based upon the underlying purpose of the calls,'' and that the ''regulatory use of such an amorphous term has generated confusion amongst sellers and telemarketers.''[438] One comment contends that it is ''this uncertainty'' that ''is likely to reduce efficiency in the use of predictive dialers for many businesses.''[439]

3. Discriminatory Call Abandonments Need Not be a Concern

Aware of the Commission's concern that eliminating the ''per campaign'' limitation might allow telemarketers to

[420] DMA at 9, *citing* 71 FR 58730.

[421] Verizon at 3; *see* Heritage at 3 (The proposed amendment ''would remove the necessity of managing the abandonment rate by the hour, which is essentially what the per-day rule requires us to do'').

[422] *Id.* at 3, 4; *see* NAA at 12 (''When calling a small list, the balance between the algorithm used by the dialer and the number of sales representatives available at any particular time (due to length of previous call, bathroom breaks, etc.) is easily upset'').

[423] NAA at 12.

[424] Verizon at 3.

[425] *Id.* at 4.

[426] *Id.* at 4; *see* Heritage at 2.

[427] *Id.* at 5 (emphasis in original).

[428] ATA at 5.

[429] *Id.*

[430] *Id.* at 7 n.11.

[431] *Id.* at 7.

[432] *Id.* Although ATA's comment does not specify why this is so, the most likely explanation appears to be that small telemarketers will be able to reduce their staffing requirements at the outset of new calling campaigns, since they will be able to average the abandonment rate over a 30-day period.

[433] DMA at 9–10; ATA at 4–5; NAA at 12–13; Verizon at 5; BoA at 2–3;

[434] DMA at 10. While it is not entirely clear from the comment, DMA appears to be arguing that it is not economical to use more than one predictive dialer for a number of small, targeted campaigns, not that the costs of additional equipment, time and labor needed to ensure that ''systems track all calling campaigns individually'' make the per campaign requirement unduly burdensome, as another comment argues. Heritage at 1–2.

[435] *Id.*; *see* NAA at 13 (''Measuring call abandonment over the duration of the campaign instead of over a 30-day period provides little relief when applied to small, tailored campaigns typical of small business sellers and telemarketers'').

[436] BoA at 2.

[437] ATA at 4–5; NAA at 13; BoA at 2.

[438] ATA at 4–5.

[439] BoA at 2–3.

target less valued consumers with a disproportionate share of abandoned calls, several industry comments contend that this concern, ''while noble, is unfounded.''[440] One comment asserts that ''it is questionable whether there are 'less valued' consumers in telemarketing campaigns'' because ''[t]elemarketers generally strive to target their calls to consumers who are most likely to be interested,'' and ''[t]here is a substantial economic incentive to structure call campaigns in this fashion.''[441] The comment emphasizes that targeting less valued consumers with a disproportionate share of call abandonments is unlikely for this reason, and emphasizes that it doubts ''that marketers operate in this manner,'' and that it ''did not see evidence in the record to that effect.''[442]

A second comment endeavors to explain why discriminatory call abandonments are unlikely. It contends that sellers and telemarketers ''have no motive'' to abandon calls to any of the three categories of consumers they call: (1) consumers who have asked for information; (2) consumers with whom the seller has an EBR; and (3) consumers who have no previous relationship with the seller.[443] The comment asserts that sellers and telemarketers would not want to risk ''alienating those consumers who are most likely to purchase'' by abandoning calls to consumers in either of the first two categories.[444] Concern about calls to consumers in the third category ''is similarly unfounded,'' according to the comment, because ''the vast majority of sellers and telemarketers purchase lists of consumers to call'' that are compiled from ''purchasing patterns, credit history, family income, demographics, etc.'' that indicate they are also ''most like to purchase the offered products or services.''[445] There is no incentive, the comment argues, ''to abandon calls at different rates to different demographics within a particular program'' because it would be a ''waste of resources'' to select consumers for a particular campaign for any reason other than ''a perceived relatively high likelihood of purchasing.''[446]

Finally, a third comment emphasizes that averaging abandonment ''rates from a number of small, highly targeted campaigns'' can be done ''without resulting harm to consumers'' because ''small and targeted campaigns are the ones likely to yield results for callers, which makes it unlikely that the caller would use a high abandonment rate.''[447] The comment adds that ''it is simply not mathematically possible to combine a relatively low abandonment rate for a small campaign with a high abandonment rate for a large campaign and reach the three percent requirement.''[448]

*C. Discussion and Analysis*

The abandoned and unidentified ''hang-up'' calls about which many consumers rightly complain are a cause for concern, but not necessarily a reason to forego adoption of the proposed amendment. These ''hang-up'' calls—which consumers understandably consider a form of harassment and an invasion of privacy because they have no way to identify the caller to stop future calls—violate two distinct requirements of the TSR. Section 310.4(a)(7) of the TSR requires all telemarketers to transmit the telephone number of the seller or telemarketer responsible for the call and, if the carrier's technology permits, the name of the seller or telemarketer.[449] In addition, Section 310.4(b)(4)(iii) requires a telemarketer to play a recorded message that states the name and telephone number of the seller on whose behalf the call is placed if no salesperson is available within two seconds of a consumer's completed greeting upon answering the call.[450]

The fact that the consumer comments suggest there may be too many ill-informed or rogue telemarketers who routinely violate these two TSR requirements provides no basis in policy for abandoning a carefully considered amendment that would benefit businesses that are attempting to comply with the law. The well-founded consumer complaints in the record about abandoned calls instead indicate that the Commission may need to redouble its industry education and law enforcement efforts. The Commission does not agree with the consumer groups and consumers who believe effective enforcement will be impossible without a complete ban on abandoned calls. Moreover, violators who are now intentionally ignoring the TSR's requirements are just as likely to violate a total ban on abandoned calls.

Likewise, the continued opposition of consumer advocates and consumers to any safe harbor that allows a small percentage of abandoned calls in order that industry and consumers may benefit from the cost savings permitted by the efficiencies of predictive dialers simply seeks a reconsideration of the Commission's careful balancing of the competing interests during the TSR amendment proceeding.[451] It also ignores the fact that the Commission endeavored to minimize the harms of abandoned calls at that time by adding the Caller ID and recorded message requirements to the TSR, precisely so that consumers would not be frightened by hang-ups from unidentified callers, and would be able to make company-specific Do Not Call requests.[452]

Moreover, opponents of the proposed amendment object, in effect, to allowing sellers and telemarketers the full three percent abandonment rate previously set by the Commission. They focus not on the fact that sellers and telemarketers still would be required to maintain no more than a three percent abandonment rate, but on the fact that there may be some modest increase in the number of abandoned calls because the industry would no longer be forced by the current ''per day'' standard to hold their abandonment rates below three percent, so that unexpected spikes in abandonment rates that occur late in the day do not violate the TSR.

Opponents contend that the proposed amendment must fail because the record lacks ''clear and convincing evidence.'' Nevertheless, the Commission concludes that the preponderance of the evidence on the record as a whole supports adoption of the proposed amendment. The factual basis for the proposed amendment does not necessarily require ''empirical evidence,'' and in this case demands only a rudimentary understanding of statistical theory and standard deviation. The Commission is more than

[440] ATA at 8; *see* DMA at 10; BoA at 2.

[441] BoA at 2;

[442] *Id.*; *see* Heritage at 2 (''Put simply, we would not want to set an abandonment rate above three percent for one ''lower-value'' group and one below three percent for a ''higher value'' group because *all* of our donor groups are vital to the success of our campaigns'') (emphasis in original).

[443] ATA at 8.

[444] *Id.*

[445] *Id.*; *see* Heritage at 2 (Similarly acknowledging that ''it may take ten calls to non-donors to gain one pledge of support while calling previous donors may result in a pledge in three of every four calls,'' but asserting that there are ''no donor groups whom we deem of more or less value'').

[446] *Id.*

[447] DMA at 10 & n.23.

[448] *Id.* at n.24.

[449] 16 CFR 310.4(a)(7).

[450] 16 CFR 310.4(b)(4)(iii). Nothing in this provision limits its application only to calls placed by predictive dialers. It applies with equal force to calls placed by automated dialers, which also must play a recording if an operator is unavailable when a call is answered.

[451] 68 FR 4580, 4642 (Jan. 29, 2003).

[452] One purpose of the requirement that telemarketers play a recorded message identifying the source of an abandoned call is to ensure that consumers without Caller ID can still assert a company-specific Do Not Call request, without the burden of the costs of that service about which AARP expresses concern. *See* note 412, *infra*, and accompanying text.

satisfied that the reasons it set forth when it proposed the amendment and those stated here meet the applicable standard.[453]

The industry, for its part, primarily criticizes the proposed amendment for retaining the ''per campaign'' standard in the current call abandonment requirement. The industry expresses particular concern that the ''per campaign'' limitation may create inefficiencies if sellers cannot switch their resources from underperforming campaigns of less than 30 days duration solely because the abandonment rate for the campaign at that point is more than three percent. This concern, as well as industry uncertainty about the meaning of the term, ''campaign,'' may be alleviated by an explanation of the term. The Commission intends the term ''campaign'' to refer to the offer of the same good or service for the same seller. As long as the same good or service is being offered for the same seller, the Commission will regard the offer as part of a single campaign, without regard to whether there are changes in the terms of the offer or the wording of any telemarketing script or scripts used to convey the offer.

The Commission recognizes that the amendment will not eliminate every possible inefficiency in the use of predictive dialers that may arise from the TSR's call abandonment prohibition. However, industry arguments that telemarketers are unlikely to target less-valued customers with a disproportionate share of abandoned calls in the absence of a ''per campaign'' limitation remain unpersuasive, because removal of that requirement would leave consumers to rely on the industry's good faith that it would not engage in such practices, despite obvious economic incentives to do otherwise.[454] Even if the ''vast majority'' of cold calls are based on purchased calling lists, not all are, and telemarketers would have a greater financial incentive to keep abandonment rates low in wealthier zip codes than in middle or low-income zip codes.[455]

*D. The Final Amendment*

For the foregoing reasons, after careful consideration of the entire record, the Commission has determined that it should adopt the amendment as proposed, and amend paragraph (i) of the ''Pattern of Calls'' prohibitions in Section 310.4(b)(4) of the TSR, as follows:

> (i) The seller or telemarketer employs technology that ensures abandonment of no more than three (3) percent of all calls answered by a person, measured over the duration of a single calling campaign, if less than 30 days, or separately over each successive 30-day period or portion thereof that the campaign continues.

The Commission has further determined that the amendment should take effect on October 1, 2008.

## IV. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (''PRA''), as amended,[456] the Commission staff is seeking OMB approval of the final rule amendments to the TSR under OMB Control No. 3084–0097.

## V. Regulatory Analysis and Regulatory Flexibility Act Requirements

Under section 22 of the FTC Act, the Commission must issue a regulatory analysis for a proceeding to amend a rule only when it: (1) estimates that the amendment will have an annual effect on the national economy of $100,000,000 or more; (2) estimates that the amendment will cause a substantial change in the cost or price of certain categories of goods or services; or (3) otherwise determines that the amendment will have a significant effect upon covered entities or upon consumers.

In general, the comments opposing the prerecorded call amendment asserted that sellers might be unable as a result of the amendment to use low-cost prerecorded messages, and thus would not be able to pass on the resulting savings to consumers. Many also argued that the cost of obtaining the consumers' agreements to receive prerecorded messages as required by the amendment would not be insignificant, but this argument was based on the mistaken assumption that the amendment would not permit the use of electronic signatures and records allowed by the E–SIGN Act, and would necessitate the use of paper records, with their attendant printing and storage costs. Finally, many comments predicted, based on the same mistaken assumption, that the costs and burdens imposed by such an amendment would reduce the number of consumers who could be called to such an extent that it would no longer be economically feasible for telemarketers to provide prerecorded message services, and telemarketers specializing in such services would not be able to remain in business.[457] Only one comment attempted to quantify the cost of the prerecorded call amendment,[458] but neither it nor any of the other comments indicated, except as noted, that the amendment would have an annual impact of more than $100,000,000, cause substantial change in the cost of goods or services, or otherwise have a significant effect upon covered entities or consumers.

To the extent, if any, that either of the two final rule amendments adopted by the Commission will have such effects,[459] the Commission has explained above the need for, and the objectives of, the final amendments; the regulatory alternatives that the Commission has considered; the projected benefits and adverse economic or other effects, if any, of the amendments; the reasons that the final amendments will attain their intended objectives in a manner consistent with applicable law; the reasons for the particular amendments that the agency has adopted; and the significant issues raised by public comments, including the Commission's assessment of and response to those comments.

The Regulatory Flexibility Act (''RFA'')[460] requires that the agency conduct an analysis of the anticipated economic impact of proposed rule amendments on small businesses. The purpose of a regulatory flexibility analysis is to ensure that the agency considers the impact on small entities and examines regulatory alternatives that could achieve the regulatory purpose while minimizing burdens on small entities. Section 605 of the RFA provides that such an analysis is not required if the agency head certifies that

[453] 71 FR at 58728–30.

[454] While it may not be mathematically possible to reduce a high abandonment rate for a large campaign enough to meet the three percent requirement by averaging it with a low abandonment rate for a small campaign, as one industry comment asserts, *see* note 448, *supra*, and accompanying text, it *would* be possible to reduce a high abandonment rate in a small campaign by averaging it with a low rate from a large campaign.

[455] *See* note 445, *supra*. Just as the need for the proposed amendment is supported by an understanding of statistics, rather than empirical evidence, an understanding of economics supports the ''per campaign'' limitation. *See* note 453, *supra*, and accompanying text.

[456] 44 USC 3501–3521.

[457] Although similar gloomy forecasts were provided in industry comments on the Commission's proposal to establish the National Do Not Call Registry, the telemarketing industry has subsequently flourished. The Commission has no more reason to believe that these doomsday scenarios are more likely to occur as a result of the prerecorded call amendment than as a result of the creation of the Registry.

[458] SmartReply at 18–21. This comment appears to assume that the amendment would *not* permit sellers to obtain the required consumer agreements to receive prerecorded calls electronically pursuant to the E–SIGN Act.

[459] None of the comments on the amendment revising the method for measuring the permissible call abandonment rate provided any such data, or indicated that the amendment would have any of these effects.

[460] 5 USC 601–612.

the regulatory action will not have a significant economic impact on a substantial number of small entities.[461]

The Commission believes that the two amendments to the TSR that it is adopting are not likely to have a significant impact on small business for several reasons. By their nature, most small businesses serve local customers, develop personal relationships with their clientele, and are therefore likely to be able to obtain their customers' agreements to receive useful prerecorded telemarketing messages. Moreover, purely informational prerecorded messages are not covered by the TSR, and the use of such messages to schedule service calls, delivery times, and the like therefore will not be subject to the written agreement requirement. In addition, to the extent that, in this Internet age, small businesses may no longer be strictly local businesses, the option provided by the amendment to obtain written agreements to receive prerecorded message calls pursuant to E–SIGN will place them on an equal footing with other businesses. Finally, as a result of the Commission's decision to defer the effective date of the written agreement requirement for twelve months, small businesses with annual service or other contracts with their customers will have ample time to revise their contracts and seek their customers' permission to receive prerecorded telemarketing messages.

For these same reasons, the Commission believes that small business telemarketers providing prerecorded call services to such small business sellers are unlikely to be significantly affected by the prerecorded call amendment. In addition, for more than two years, small and large telemarketers alike, as well as sellers that conduct their own telemarketing, have been governed by the Commission's enforcement forbearance policy for prerecorded messages answered by a consumer, which has mandated an up-front disclosure to consumers of how to opt out, and encouraged the use of an interactive opt-out mechanism. During that time, according to the comments, many of which came from small business telemarketers, the industry has transitioned to automated interactive message systems that are now affordable and widely available. Consequently, the Commission has no reason to believe that the 90 days it is allowing for sellers and telemarketers to provide automated interactive opt-out mechanisms will disadvantage either small or large business telemarketers or sellers. Although prerecorded message calls placed on answering machines or voicemail services were not subject to the Commission's enforcement forbearance policy, there is nothing in the record to suggest that application of the requirement of an automated interactive opt-out mechanism to such calls could not be accomplished within the phase-in period, or would disadvantage either small or large business telemarketers or sellers.

The Commission also believes that the amendment adjusting the method for measuring the permissible call abandonment rate by predictive dialers in live telemarketing campaigns is not likely to have a significant impact on small business. If anything, the change in the standard from a ''per day'' to a per-30-day calculation should lead to a reduction in the cost of live telemarketing campaigns for both small and large businesses, for the reasons previously stated, and will likely encourage the use of such calls to EBR customers by small and large businesses alike. In fact, small business sellers and telemarketers are likely to derive the greatest benefit from the amendment because the smaller size of their calling lists has prevented full realization of the efficiencies of predictive dialers under the existing measurement standard, an unintended consequence that the amendment will correct.

Accordingly, the Commission concludes that the two amendments to the TSR will not have a significant or disproportionate impact on the costs of small business. Based on the information in the record, therefore, the Commission certifies that the two amendments published in this document will not have a significant economic impact on a substantial number of small businesses.

Nonetheless, to ensure that no such impact has been overlooked, the Commission has conducted the following final regulatory flexibility analysis, as summarized below:

*A. Need for and Objective of the Amendments*

As previously discussed, the Commission is issuing the prerecorded call amendment to make explicit the prohibition on such calls implicit in the TSR's call abandonment provision, while expressly permitting prerecorded calls made by or on behalf of sellers to consumers who have given the seller a written agreement to receive such calls. The proposed explicit prohibition of all prerecorded telemarketing calls without the consumer's express prior written agreement implements the Telemarketing Act requirement that the Commission prohibit a pattern of unsolicited telephone calls that ''the reasonable consumer would consider coercive or abusive of such consumer's right to privacy,'' and effectuates the apparent intent of Congress in the TCPA to prohibit prerecorded telemarketing calls, regardless of whether they are answered in person or by an answering machine or voicemail service.[462]

The Commission is also issuing an amendment that will modify the existing safe harbor to allow sellers and telemarketers to measure the three percent maximum call abandonment rate prescribed in § 310.4(b)(4)(i) for a single calling campaign over a 30-day period, rather than on a daily basis, as is currently required. This amendment, also made pursuant to the Telemarketing Act, will enhance the efficiency of the predictive dialers used in live telemarketing campaigns, allowing businesses to focus their telemarketing on smaller groups of consumers, which will lower marketing costs and make live campaigns more affordable for small businesses. The amendment will also permit more narrowly targeted telemarketing to smaller groups of consumers who are the most likely to be interested in a particular offer.

*B. Significant Issues Raised by Public Comment; Summary of the Agency's Assessment of these Issues; and Changes, if any, Made in Response to Such Comments*

As discussed in Section III above, the principal issues raised by the industry comments relate to the potential costs and burdens of the requirement for obtaining consumers' express written agreement to receive prerecorded telemarketing calls, and concerns about economic hardship for telemarketers that specialize in prerecorded telemarketing and their customers if too few consumers agree to receive such calls.[463]

As previously noted, most of the industry comments that objected to the cost and burden of obtaining written agreements from consumers to receive prerecorded calls mistakenly assumed that the amendment would not permit the use of agreements obtained

[461] 5 USC 605.

[462] Although the call abandonment prohibition applies only to calls ''answered by a person,'' the Commission has determined, pursuant to the Telemarketing Act, that the amendment should also apply to prerecorded calls picked up by answering machines and voicemail services.

[463] None of the comments on the amendment revising the method for measuring the maximum permissible call abandonment rate challenged the Commission's analysis of the issue or proposed an alternative solution.

electronically pursuant to the E–SIGN Act, notwithstanding express statements in comparable provisions of the TSR permitting such agreements.[464] The Commission has accordingly added a comparable footnote to the final amendment to make it clear that the required agreements may be obtained electronically pursuant to E–SIGN in order to minimize compliance costs and burdens.

Many comments also requested that the Commission provide adequate time for preparations to comply with the written agreement requirement by deferring its effective date for six months or longer, and permitting all affected entities to continue calling EBR customers until the requirement takes effect. Although the Commission previously had stated that it did not believe that a delayed effective date would necessarily reduce compliance burdens for small entities,[465] the Commission has been persuaded by the comments to defer the effective date of the written agreement requirement for twelve months.

The Commission has also been persuaded by the comments to defer the effective date of the requirement in the amendment that sellers and telemarketers provide an automated interactive opt-out mechanism until December 1, 2008, even though the comments, many of which came from small business telemarketers that currently use such mechanisms, assert that this technology is now affordable and widely available.

A number of comments from industry and consumers who oppose the amendment expressed concern that the written agreement requirement would create economic hardships for entities specializing in prerecorded telemarketing and their customers if too few customers agree to receive such calls. However, many in the industry contended, on the contrary, that there are a significant number of consumers who wish to receive prerecorded telemarketing messages. The Commission believes that the prerecorded call amendment will enhance consumer choice, and permit those consumers who wish to receive prerecorded messages to sign up to receive them while protecting the privacy of those who do not wish to be disturbed. Having received industry comments asserting that a National Do Not Call Registry would result in the demise of the telemarketing industry, when it has subsequently flourished, the Commission doubts that the amendment will have the predicted negative effect.[466]

*C. Description and Estimate of Number of Small Entities Subject to the Final Amendments or Explanation Why no Estimate is Available*

Each of the proposed rule amendments will affect sellers and telemarketers that make interstate telephone calls to consumers (outbound calls) as part of a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution.[467] For the majority of entities subject to the proposed rule, a small business is defined by the Small Business Administration as one whose average annual receipts do not exceed $6 million or that has fewer than 500 employees.[468]

Prior to the October 2006 request for comment, the Commission had not previously sought comment on an explicit prohibition of prerecorded telemarketing calls without the consumer's express prior written agreement. Although the Commission specifically requested information or comment on the number of small entities that would be subject to the proposed prerecorded call amendment, none of the comments provided this information. Based on the absence of available data in this and related proceedings, the Commission believes that a precise estimate of the number of small entities that would be subject to the prerecorded call amendment is not currently feasible.

For example, in the proceedings to amend the TSR in 2002, the Commission sought public comment and information on the number of small business sellers and telemarketers that would be impacted by amendment of the standard for measuring the three percent call abandonment rate. In its request, the Commission noted the lack of publicly available data regarding the number of small entities that might be impacted by the proposed Rule.[469] The Commission received no information in response to its request.[470]

Likewise, neither the original petition to amend the call abandonment safe harbor to expand the period over which the three percent call abandonment ceiling for live telemarketing calls is calculated,[471] nor the industry comments on that issue,[472] provided any data regarding the number of small entities that may be affected by the Commission's ultimate determination.[473] Although the Commission subsequently renewed its request for this information in the most recent request for comment,[474] none of the comments on the amendment addressed the issue. Based on the absence of available data in this and related proceedings, the Commission believes that a precise estimate of the number of small entities that fall under the amendment of the method for measuring the maximum permissible call abandonment rate is not currently feasible.

*D. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Amendments, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Amendments and the Type of Professional Skills That Will Be Necessary to Comply*

The rule amendment explicitly prohibiting prerecorded telemarketing calls unless the consumer has agreed in writing to accept such calls will affect the TSR's recordkeeping requirements insofar as it would compel regulated entities to keep records of such agreements under the general recordkeeping requirements of the existing rule.[475] It appears, however, that there should be no significant change in this burden since regulated entities, regardless of size, already are required to maintain electronic or other

[464] 16 CFR 310.3(a)(3)(i) n.5; 310.4(b)(1)(iii)(B)(i) n.6.

[465] 71 FR at 58732.

[466] For example, the use by government and private sector entities of purely informational prerecorded messages that are not subject to the amendment appears to be increasing.

[467] Thus, the amendments will not apply to purely ''informational'' outbound calls that do not induce the purchase of goods or services or a charitable contribution.

[468] These numbers represent the size standards for most retail and service industries ($6 million total receipts) and manufacturing industries (500 employees). A list of the SBA's size standards for all industries can be found at (*http://www.sba.gov/size/summary-whatis.html*).

[469] *See* TSR SBP, 68 FR at 4667 (noting that Census data on small entities conducting telemarketing does not distinguish between those entities that conduct exempt calling, such as survey calling, those that receive inbound calls, and those that conduct outbound calling campaigns. Moreover, sellers who act as their own telemarketers are not accounted for in the Census data).

[470] *Id.*; *see also* 68 FR 45134, 45143 (July 31, 2003) (noting that comment was requested, but not received, regarding the number of small entities subject to the National Do Not Call Registry provisions of the amended TSR).

[471] *See* DMA petition, *available at* (*http://www.ftc.gov/os/2004/10/041019dmapetition.pdf*).

[472] 71 FR at 58731.

[473] Although industry comments have argued that the proposed revision would remove an obstacle to small business compliance with the call abandonment safe harbor, as discussed in Section III, *supra,* none of the comments has addressed the number of small businesses that might benefit from revision of the current standard.

[474] 71 FR at 58731.

[475] *See* 16 CFR 310.5(a)(5).

records of the existence of an EBR in the ordinary course of business in order to demonstrate compliance with existing FTC and FCC restrictions on prerecorded calls. The only difference is that, instead of keeping records of EBR relationships as a precondition for placing prerecorded calls, the amendment instead will require sellers to maintain records of consumers' agreements to receive such calls. Since the Commission has emphasized that these agreements may be obtained pursuant to E–SIGN, minimal additional recordkeeping should be necessary. For these reasons, the prerecorded call amendment would not impose or affect any new or existing reporting, recordkeeping or third- party disclosure requirements within the meaning of the PRA.

In addition, the Commission does not believe that the amendment to expand the period over which the three percent call abandonment ceiling for live telemarketing calls is calculated will create any new burden on sellers or telemarketers, because the existing ''per day per campaign'' standard of the TSR already requires them to establish recordkeeping systems to demonstrate their compliance. The Commission also does not believe that this modification of the Rule will materially increase any existing compliance costs, and may in fact reduce them for small entities that are able to take advantage of the revised safe harbor requirement.

*E. Identification of Other Duplicative, Overlapping, or Conflicting Federal Rules*

The FTC is mindful that the amendment explicitly prohibiting all prerecorded telemarketing calls without the consumer's express prior written agreement differs from the FCC's regulations and some State laws, which permit sellers to place such calls to consumers who have given their prior express consent or to consumers with whom the seller has an ''established business relationship.''[476] However, the Commission does not believe that an explicit prohibition would conflict with the FCC regulations or similar State laws, because compliance with the TSR's present prohibition does not violate those more permissive standards.

With respect to the amendment revising the method for measuring the maximum permissible call abandonment rate, the FTC has not identified any other Federal or State statutes, rules, or policies that would overlap or conflict with this amendment, except as indicated below. The amendment would help to reduce the differences on this issue between the TSR and the FCC's TCPA rules, as well as similar state requirements.[477] As the Commission has reiterated, compliance with the FTC's more precise standard would constitute acceptable compliance with the FCC rule and similar state requirements, so there is no conflict between these regulations.[478]

*F. Steps the Agency Has Taken to Minimize Any Significant Economic Impact on Small Entities, Consistent with the Stated Objectives of the Applicable Statutes, Including the Factual Policy, and Legal Reasons for Selecting the Alternatives Finally Adopted, and Why Each of the Significant Alternatives, If Any, Were Rejected.*

The amendment adding an explicit prohibition of prerecorded telemarketing calls without a consumer's express prior written agreement implements the requirement in the Telemarketing Act that the Commission prescribe rules that include a prohibition against ''a pattern of unsolicited telephone calls which the reasonable consumer would consider coercive or abusive of such consumer's right to privacy.'' Since the Commission has previously rejected a safe harbor to permit EBR-based prerecorded calls, the only workable alternatives to this explicit prohibition would be to retain the present implicit prohibition of such calls in § 310.4(b)(4)(i) (the call abandonment provision), or to limit the prohibition on prerecorded calls except with a consumer's prior written agreement only to calls that are answered in person, rather than by an answering machine or voicemail service. After careful consideration, the Commission has rejected each of these alternatives as inconsistent with the mandate of the Telemarketing Act, based on the record in this proceeding and its enforcement experience.

The amendment of the existing call abandonment safe harbor replaces the present requirement that the three percent maximum call abandonment rate be measured ''per day per campaign,'' with a revised requirement that the maximum be measured ''over the duration of the campaign, if less than 30 days, or separately over each successive 30-day period or portion thereof that the campaign continues.'' Other regulatory options considered by the Commission included retaining the present ''per day per campaign'' standard or requiring that the maximum call abandonment rate be measured over a 30-day period for all of a telemarketer's campaigns. The Commission does not believe, however, that the present standard should be retained, or that a standard that lacks a ''per campaign'' limitation would be adequate to protect disfavored consumers from receiving a disproportionate share of abandoned calls.

The amendments explicitly prohibiting prerecorded calls without consumers' express agreement to receive them and revising the method for measuring the maximum permissible call abandonment rate are intended to apply to all entities subject to the amendments. The Commission has carefully considered industry comments requesting a sufficient phase-in period to minimize the costs and burdens of complying with the prerecorded call amendment, and for these reasons has decided to defer the effective date of the amendment's written agreement requirement for twelve months for all entities, including small businesses. Although the industry comments, including comments from small business telemarketers, indicated that automated interactive opt-out mechanisms are now affordable and widely available, the Commission is also deferring the effective date of the interactive opt-out requirements of the amendment until December 1, 2008, to ensure that all affected entities will have sufficient time to prepare to comply. Although the Commission will revoke its enforcement forbearance policy for prerecorded telemarketing calls when the interactive opt-out requirements take effect because of inconsistencies in their requirements, the Commission has decided to permit sellers to continue making prerecorded calls to existing and new EBR customers who do not opt out until the written agreement requirement takes effect.

None of the comments on the amendment of the method for measuring the maximum permissible call abandonment rate similarly requested any delay to give affected entities sufficient time to prepare to comply. Since this amendment will benefit all small and large entities making live telemarketing calls, there is no apparent reason to delay its implementation. Accordingly, the Commission has determined that the

[476] 47 CFR 64.1200(a)(2)(iv). *See also, e.g.*, Ariz. Rev. Stat., § 44—1278(B)(4) (permitting prerecorded calls with called party's ''prior express consent''); Ind. Code, § 24—5—14—5 (permitting prerecorded calls where there is a ''current business or personal relationship'').

[477] *See, e.g.*, Cal. Pub. Util. Comm'n, Decision 03— 03—038 (Mar. 13, 2003), at 19 (adopting the FCC's 30-day standard for measuring call abandonment rates).

[478] 69 FR at 67291 & n.19; 71 FR at 58727.

amendment should take effect on October 1, 2008.

## VI. Final Amendments

### List of Subjects in 16 CFR Part 310

Telemarketing, Trade practices.

■ For the reasons discussed in the preamble, the Federal Trade Commission amends 16 CFR part 310 as follows:

## PART 310—TELEMARKETING SALES RULE

■ 1. The authority citation for part 310 continues to read as follows:

**Authority:** 15 USC 6101—6108.

■ 2. In § 310.5, redesignate footnote 8 as 9.

■ 3. In § 310.4, redesignate footnote 7 as 8.

■ 4. Amend § 310.4 by adding new paragraph (b)(1)(v), and revising paragraph (b)(4)(i) to read as follows:

### § 310.4 Abusive telemarketing acts or practices.

* * * * *

(b) * * *

(1) * * *

(v) Initiating any outbound telephone call that delivers a prerecorded message, other than a prerecorded message permitted for compliance with the call abandonment safe harbor in § 310.4(b)(4)(iii), unless:

(A) in any such call to induce the purchase of any good or service, the seller has obtained from the recipient of the call an express agreement, in writing, that:

*(i)* the seller obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the seller to place prerecorded calls to such person;

*(ii)* the seller obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service;

*(iii)* evidences the willingness of the recipient of the call to receive calls that deliver prerecorded messages by or on behalf of a specific seller; and

*(iv)* includes such person's telephone number and signature;[7] and

(B) in any such call to induce the purchase of any good or service, or to induce a charitable contribution from a member of, or previous donor to, a non-profit charitable organization on whose behalf the call is made, the seller or telemarketer:

*(i)* allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call; and

*(ii)* within two (2) seconds after the completed greeting of the person called, plays a prerecorded message that promptly provides the disclosures required by § 310.4(d) or (e), followed immediately by a disclosure of one or both of the following:

(A) in the case of a call that could be answered in person by a consumer, that the person called can use an automated interactive voice and/or keypress-activated opt-out mechanism to assert a Do Not Call request pursuant to § 310.4(b)(1)(iii)(A) at any time during the message. The mechanism must:

(1) automatically add the number called to the seller's entity-specific Do Not Call list;

(2) once invoked, immediately disconnect the call; and

(3) be available for use at any time during the message; and

(B) in the case of a call that could be answered by an answering machine or voicemail service, that the person called can use a toll-free telephone number to assert a Do Not Call request pursuant to § 310.4(b)(1)(iii)(A). The number provided must connect directly to an automated interactive voice or keypress-activated opt-out mechanism that:

(1) automatically adds the number called to the seller's entity-specific Do Not Call list;

(2) immediately thereafter disconnects the call; and (3) is accessible at any time throughout the duration of the telemarketing campaign; and

*(iii)* Complies with all other requirements of this Part and other applicable federal and state laws.

(C) Any call that complies with all applicable requirements of this paragraph (v) shall not be deemed to violate § 310.4(b)(1)(iv) of this Part.

(D) This paragraph (v) shall not apply to any outbound telephone call that delivers a prerecorded healthcare message made by, or on behalf of, a covered entity or its business associate, as those terms are defined in the HIPAA Privacy Rule, 45 CFR 160.103.

* * * * *

(4)

(i) The seller or telemarketer employs technology that ensures abandonment of no more than three (3) percent of all calls answered by a person, measured over the duration of a single calling campaign, if less than 30 days, or separately over each successive 30-day period or portion thereof that the campaign continues.

* * * * *

By direction of the Commission.

**Donald S. Clark**

*Secretary.*

[FR Doc. E8–20253 Filed 8–28–08; 8:45 am]

**BILLING CODE: 6750–01–S**

[7] For purposes of this Rule, the term ''signature'' shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

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# Part VI

# The President

## Proclamation 8283—National Alcohol And Drug Addiction Recovery Month, 2008

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# Presidential Documents

Title 3—

The President

Proclamation 8283 of August 27, 2008

## National Alcohol And Drug Addiction Recovery Month, 2008

**By the President of the United States of America**

**A Proclamation**

Substance abuse is an unrelenting evil that destroys lives, ruins families, and endangers neighborhoods. During National Alcohol and Drug Addiction Recovery Month, we emphasize our commitment to alcohol and drug addiction prevention. This month is also an opportunity to recognize those who have had the courage to combat and overcome addiction.

Alcohol and drug abuse require an aggressive response. My Administration will continue to help educate our children through the National Youth Anti-Drug Media Campaign. This Campaign urges parents and adults to safeguard our young people from the abuse of prescription drugs, focuses on random drug-testing in schools and in the workplace, and creates drug-free community coalitions. First Lady Laura Bush leads the Helping America's Youth initiative, which assists our youth in making healthy life choices through the participation of caring adults in their lives. The dedicated efforts of families, teachers, law enforcement, faith-based groups, and community activists are all important.

We are also working to reduce the supply of illegal drugs coming into our country and fighting demand here at home. In order to disrupt the market for illegal drugs, the National Drug Control Strategy report has coordinated law enforcement efforts throughout our Nation to help dismantle channels of distribution, and we are also working with foreign governments to eradicate the trafficking of illegal drugs.

Too many of our citizens have been swept up in a cycle of addiction. Through faith-based and community groups, we have revolutionized the way we help people break the chains of addiction. The Access to Recovery program provides addicts with vouchers so that they can attend the treatment center of their choice. Our Nation's armies of compassion have helped nearly 200,000 clients rediscover their dignity and purpose through this program.

During National Alcohol and Drug Addiction Recovery Month and throughout the year, we underscore the worthy mission of confronting substance abuse. This year's theme, ''Join the Voices of Recovery: Real People, Real Recovery,'' highlights the importance of providing hope and love to those who are trying to overcome drug and alcohol addiction and rebuild their lives. For more information on how to help fellow citizens and continue building a stronger community, visit recoverymonth.gov.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 2008 as National Alcohol and Drug Addiction Recovery Month. I call upon the people of the United States to observe this month with the appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of August, in the year of our Lord two thousand eight, and of the Independence of the United States of America the two hundred and thirty-third.

[FR Doc. E8–20303
Filed 8–28–08; 8:45 am]
Billing code 3195–01–P

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## REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

## RULES GOING INTO EFFECT AUGUST 29, 2008

**AGRICULTURE DEPARTMENT**

Adjustments of Appendices:

Dairy Tariff-Rate Import Quota Licensing Regulation (2008 Tariff-Rate Quota Year); published 8-29-08

**ENVIRONMENTAL PROTECTION AGENCY**

Revisions to the California State Implementation Plan:

Ventura County Air Pollution Control District; published 7-30-08

**GENERAL SERVICES ADMINISTRATION**

Federal Management Regulation:

FMR Case 2007-102-1, Replacement of Personal Property Pursuant to the Exchange/Sale Authority; published 8-29-08

**HOMELAND SECURITY DEPARTMENT**

**Coast Guard**

Safety Zone:

American Music Festival; Chesapeake Bay, Virginia Beach, VA; published 8-22-08

**INTERIOR DEPARTMENT**

**Fish and Wildlife Service**

2008-2009 Refuge-Specific Hunting and Sport Fishing Regulations (Additions); published 8-29-08

## RULES GOING INTO EFFECT SEPTEMBER 1, 2008

**AGRICULTURE DEPARTMENT**

**Agricultural Marketing Service**

Milk in the Northeast and Other Marketing Areas:

Interim Order Amending the Orders; published 7-31-08

**COMMERCE DEPARTMENT**

**National Oceanic and Atmospheric Administration**

Atlantic Highly Migratory Species:

Atlantic Bluefin Tuna Fisheries; published 8-29-08

**HOMELAND SECURITY DEPARTMENT**

**Coast Guard**

Security Zone, Mackinac Bridge and Straits of Mackinac, Mackinaw City, MI; published 8-8-08

**INTERIOR DEPARTMENT**

**Fish and Wildlife Service**

Migratory Bird Hunting:

Early Seasons and Bag and Possession Limits for Certain Migratory Game Birds in Contiguous United States, Alaska, Hawaii, Puerto Rico, and Virgin Islands; published 8-29-08

**PENSION BENEFIT GUARANTY CORPORATION**

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single Employer Plans; Interest Assumptions for Valuing and Paying Benefits; published 8-15-08

**TRANSPORTATION DEPARTMENT**

**National Highway Traffic Safety Administration**

Motor vehicle safety standards:

Lamps, reflective devices and associated equipment; published 12-4-07

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**AGRICULTURE DEPARTMENT**

**Agricultural Marketing Service**

Apricots Grown in Designated Counties in Washington; Increased Assessment Rate; comments due by 9-2-08; published 8-18-08 [FR E8-19018]

**AGRICULTURE DEPARTMENT**

**Animal and Plant Health Inspection Service**

Importation of Cooked Pork Skins; comments due by 9-2-08; published 7-2-08 [FR E8-15014]

Minimum Age Requirements for the Transport of Animals; comments due by 9-2-08; published 7-31-08 [FR E8-17591]

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**AGRICULTURE DEPARTMENT**

**Food and Nutrition Service**

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**COMMERCE DEPARTMENT**

**National Oceanic and Atmospheric Administration**

Pacific Halibut Fisheries; Subsistence Fishing; comments due by 9-3-08; published 8-4-08 [FR E8-17814]

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Confidential Information and Commission Records and Information; comments due by 9-2-08; published 8-1-08 [FR E8-17529]

**DEFENSE DEPARTMENT**

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**DEFENSE DEPARTMENT**

**Navy Department**

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**ENERGY DEPARTMENT**

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**ENVIRONMENTAL PROTECTION AGENCY**

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Atrazine; Pesticide Tolerances; comments due by 9-2-08; published 7-2-08 [FR E8-15010]

Bacillus thuringiensis Cry2Ab2 protein; Exemption from the Requirement of a Tolerance; comments due by 9-2-08; published 7-2-08 [FR E8-14794]

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Florida and South Carolina; Open for comments until further notice; published 2-11-08 [FR 08-00596]

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Proposed Authorization of State Hazardous Waste Management Program Revision:

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**HEALTH AND HUMAN SERVICES DEPARTMENT**
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**HOMELAND SECURITY DEPARTMENT**
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**HOMELAND SECURITY DEPARTMENT**
**Transportation Security Administration**
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**INTERIOR DEPARTMENT**
**Indian Affairs Bureau**
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**Fish and Wildlife Service**
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Guaranteed Benefits; Allocation of Plan Assets; Pension Protection Act (of 2006); comments due by 9-2-08; published 7-1-08 [FR E8-14813]

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Hartzell Propeller Inc. ( )HC ( )(2,3)Y(K,R)-2 Two-and Three-Bladed Compact Series Propellers; comments due by 9-2-08; published 7-2-08 [FR E8-14312]
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**TRANSPORTATION DEPARTMENT**
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**TRANSPORTATION DEPARTMENT**
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## LIST OF PUBLIC LAWS

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The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

**H.R. 4040/P.L. 110–314**
Consumer Product Safety Improvement Act of 2008 (Aug. 14, 2008; 122 Stat. 3016)

**H.R. 4137/P.L. 110–315**
Higher Education Opportunity Act (Aug. 14, 2008; 122 Stat. 3078)

**H.R. 6432/P.L. 110–316**
To amend the Federal Food, Drug, and Cosmetic Act to revise and extend the animal drug user fee program, to establish a program of fees relating to generic new animal drugs, to make certain technical corrections to the Food and Drug Administration Amendments Act of 2007, and for other purposes. (Aug. 14, 2008; 122 Stat. 3509)

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