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

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Part 613

Plant Materials Centers (PMC)

AGENCY: Natural Resources Conservation Service (NRCS), USDA.

ACTION: Final rule.

SUMMARY: Minor editorial changes are being made to clarify and update the existing regulation. These changes do not significantly affect part 613, however we present the entire part, as amended, for the convenience of the reader.

DATES: *Effective Date:* September 3, 2008.

FOR FURTHER INFORMATION CONTACT: Michael Hubbs, Director, Ecological Sciences Division, NRCS, USDA, Post Office Box 2890, Washington, DC 20013; telephone: (202) 720–2587.

SUPPLEMENTARY INFORMATION: Since part 613 became effective (72 FR 68743 December 6, 2007), several changes have occurred requiring the need to update it. These changes include renaming the National PMC in Beltsville, Maryland, to the Norman A. Berg National PMC and a correction in the location of the Louisiana PMC from Golden Meadows to Galliano. These changes are minor and do not significantly affect part 613. This rule sets forth general statements of Agency policy and internal Agency organization and management.

Therefore, pursuant to 5 U.S.C. 553, it is found that notice and public comment is not required. Further, in light of the minor changes, good cause is found for making this rule effective on publication in the **Federal Register**. Since this rule relates to internal Agency management, it is exempt from E.O. 12291. Finally, this action is not a rule as defined by Public Law 96–354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 613

Plants (agriculture), Soil conservation.

■ Accordingly, 7 CFR part 613 is revised to read as follows:

PART 613—PLANT MATERIALS CENTERS

Sec.
613.1 Purpose.
613.2 Policy and objectives.
613.3 NRCS responsibilities in plant materials.
613.4 Special production of plant materials.
613.5 PMCs.

Authority: 16 U.S.C. 590a–590f, 5908; 7 U.S.C. 1010–1011.

§ 613.1 Purpose.

This part provides NRCS policy on the operation of PMCs. The Centers have responsibilities for assembling, testing, releasing, and providing for the commercial production and use of plant materials and plant materials technology for programs of soil, water, and related resource conservation and development.

§ 613.2 Policy and objectives.

(a) It is NRCS policy to assemble, comparatively evaluate, release, and distribute for commercial increase new or improved plant materials and plant materials technology needed for broad programs of resource conservation and development for agriculture, wildlife, urban, recreation, and other land uses and environmental needs. It is the policy of NRCS to conduct plant materials work in cooperation with other agencies of the Department of Agriculture, such as the Agricultural Research Service, and with other Federal and State research agencies, including State agricultural experiment stations. The emphasis of the NRCS plant materials work is to find suitable plants to address conservation needs. In contrast, the emphasis of research agencies and organizations in plant development is to improve economically important crops. The NRCS program of testing and releasing new seed-propagated plant materials follows the guidelines in ''Statement of Responsibilities and Policies Relating to the Development, Release, and Multiplication of Publicly Developed Varieties of Seed-Propagated Crops,'' which was adopted in June 1972, by Land Grant Colleges and interested Federal agencies. NRCS releases improved conservation plant materials requiring vegetative multiplication in ways appropriate for particular States and particular species by working with experiment stations, crop improvement associations, and other State and Federal agencies.

(b) The objective of the plant materials activity is to select or develop special and improved plants and techniques for their successful establishment and maintenance to solve conservation problems and needs related to:

(1) Controlling soil erosion on all lands;

(2) Conserving water;

(3) Protecting upstream watersheds;

(4) Reducing sediment movement into waterways and reservoirs through the stabilization of critical sediment sources, such as surface mined lands, highway slopes, recreation sites, and urban and industrial development areas;

(5) Stabilizing disposal areas for liquid and solid wastes;

(6) Improving plant diversity and lengthening the grazing season on dryland pastures and rangelands;

(7) Managing brush on mountain slopes with fire-retarding plant cover to reduce the possibility of fires that threaten life and property, or result in serious sediment sources;

(8) Improving the effectiveness of windbreaks and shelterbelts for reducing airborne sediment, controlling snow drifting, and preventing crop damage from wind erosion;

(9) Protecting streambank, pond, and lake waterlines from erosion by scouring and wave action;

(10) Improving wildlife food and cover, including threatened and endangered and pollinator species;

(11) Selecting special purpose plants to meet specific needs for environment protection and enhancement;

(12) Selecting plants that tolerate air pollution agents and toxic soil chemicals;

(13) Selecting plants that mitigate odor, Particulate Matter (PM)–10, and PM–2.5;

(14) Testing plants for biofuels and other energy-related activities; and

(15) Evaluating plants and techniques to combat invasive plant species and for reestablishment of desirable species after eradication.

§ 613.3 NRCS responsibilities in plant materials.

NRCS operates or enters into agreements with State universities or other State organizations to operate PMCs. NRCS also cooperates, both formally and informally, with other Federal, State, county, and nonprofit agencies or organizations on the selection of plants and evaluation of plant technology to increase the capabilities of PMCs. NRCS employs specialists for testing and selecting plant materials for conservation uses and the development of plant materials technology. NRCS' responsibilities are to: (a) Identify the resource conservation needs and cultural management methods for environmental protection and enhancement.

(b) Assemble and comparatively evaluate plant materials at PMCs and on sites where soil, climate, or other conditions differ significantly from those at the Centers.

(c) Make comparative field plantings for final testing of promising plants and techniques in cooperation with conservation districts and other interested cooperators.

(d) Release cooperatively improved conservation plants and maintain the breeder or foundation stocks in ways appropriate for particular State and plant species by working with experiment stations, crop improvement associations, and other State and Federal agencies.

(e) Produce limited amounts of foundation or foundation-quality seed and plants available for allocation to conservation districts, experiment stations, other Federal and State research agencies, State seed certifying organizations and directly to commercial growers (if other options do not exist) that will use the material to establish seed fields, seed orchards, or vegetative plantings for large-scale increase.

(f) Encourage and assist conservation districts, commercial seed producers, and commercial and State nurseries to produce needed plant materials for conservation uses.

(g) Encourage the use of improved plant materials and plant materials technology in resource conservation and environmental improvement programs.

§ 613.4 Special production of plant materials.

NRCS can produce plant materials in the quantity required to do a specific conservation job if this production will serve the public welfare and only if the plant materials are not available commercially. This function will be performed only until the plant materials are available commercially. Specific production of plant materials by NRCS requires the approval of the Chief.

§ 613.5 PMCs.

(a) The Norman A. Berg National PMC. The Norman A. Berg National PMC at Beltsville, Maryland, focuses on national initiatives and provides coordination for plant materials work across all 50 States. In addition, the center provides plants and plant technology to address resource concerns in the mid-Atlantic region.

(b) Other PMCs. There are 26 other PMCs. Each serves several major land resource areas. NRCS operates 24 of these Centers, and 2 by cooperating agencies, as follows:

(1) Operated by NRCS: Tucson, AZ, Booneville, AR, Lockeford, CA, Brooksville, FL, Americus, GA, Molokai, HI, Aberdeen, ID, Manhattan, KS, Galliano, LA, East Lansing, MI, Coffeeville, MS, Elsberry, MO, Bridger, MT, Fallon, NV, Cape May Courthouse, NJ, Los Lunas, NM, Big Flats, NY, Bismarck, ND, Corvallis, OR, Kingsville, TX, Knox City, TX, Nacogdoches, TX, Pullman, WA, and Alderson, WV.

(2) Operated by cooperating agencies with financial and technical assistance from NRCS: Meeker, CO—White River and Douglas Creek Soil Conservation Districts with partial funding from NRCS.

(3) Operated by cooperating agencies with technical assistance from NRCS: Palmer, AK—State of Alaska, Department of Natural Resources.

Signed in Washington, DC, on August 20, 2008.

Arlen L. Lancaster,

Chief, Natural Resources Conservation Service.

[FR Doc. E8–20401 Filed 9–2–08; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1000

[Docket No. AMS–DA–07–0026; AO–14–A77]

Milk in the Northeast and Other Marketing Areas; Delay of Effective Date

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule; delay of effective date.

SUMMARY: An interim final rule published July 31, 2008 amending the manufacturing cost allowances and the butterfat yield factor used in Class III and Class IV product-price formulas applicable in all Federal milk marketing orders had an effective date of September 1, 2008. The effective date of the Interim Rule will now be October 1, 2008. The rule's effective date is delayed because a complaint to enjoin the implementation of the revised manufacturing allowances and butterfat yield factor was filed in the United States District Court for the District of Columbia. Delaying implementation allows sufficient time for a preliminary injunction hearing.

DATES: The effective date for the interim final rule published July 31, 2008 (73 FR 44617), is delayed from September 1, 2008, until October 1, 2008.

FOR FURTHER INFORMATION CONTACT: Jack Rower, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation and Enforcement, Stop 0231—Room 2971–S, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 720–7183.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 1000 provide for, among other things, formulas that establish minimum Class III and Class IV milk prices in all Federal milk marketing orders. The Class III and Class IV formulas also set minimum Federal order prices for Class I and Class II nonfat solids and skim milk prices and pricing factors that are announced in advance of the month for which such prices will be effective. Minimum Class III and Class IV prices for any given month are announced for all Federal orders on or before the 5th day of the following month.

The Class III and Class IV product-price formulas use finished product prices for cheese, butter, nonfat dry milk and dry whey together with manufacturing allowances (commonly referred to as ''make allowances'') and yield factors to determine the minimum value of milk used to make the finished dairy products. Currently, the make allowances being used to compute all Federal order minimum class prices are those published in the **Federal Register** on December 29, 2006 (71 FR 78333). The current butterfat yield factor used in the Class III and Class IV product-pricing formulas is that published in the **Federal Register** on February 12, 2003 (65 FR 76832).

Delay in Effective Date

On July 31, 2008, an Interim Final Rule was published in the **Federal Register** (73 FR 44617) amending the make allowances and butterfat yield

factor used in the Class III and Class IV product-pricing formulas.

On Friday, August 15, 2008, a lawsuit was filed in the District Court for the District of Columbia requesting that a temporary restraining order be issued by the court until a preliminary injunction hearing could be held as part of the pre-hearing process. USDA determined that it was in the best interest of the dairy industry to delay implementation of the Final Rule one month until October 1, 2008. Delaying implementation allows sufficient time for a preliminary injunction hearing to be held.

The revised manufacturing allowances and butterfat yield factor will be used in computing the October 2008 Federal order minimum advance Class I and Class II prices and pricing factors to be announced on September 19, 2008 unless a court order directs otherwise. The revised manufacturing allowances and butterfat yield factor of the Interim Final Rule will be used to compute minimum Federal order Class III and Class IV prices for October 2008 and in the announcement of advanced prices and pricing factors thereafter.

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

Dated: August 28, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–20391 Filed 8–28–08; 4:15 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. APHIS–2008–0086]

Brucellosis in Cattle; State and Area Classifications; Montana

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the brucellosis regulations concerning interstate movement of cattle by changing the classification of Montana from Class Free to Class A. We have determined that Montana no longer meets the standards for Class Free status. This action is necessary to prevent the interstate spread of brucellosis.

DATES: This interim rule is effective September 3, 2008. We will consider all comments that we receive on or before November 3, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0086* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2008–0086, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2008–0086.

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

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

FOR FURTHER INFORMATION CONTACT: Dr. Debbi A. Donch, National Brucellosis Epidemiologist, Ruminant Health Programs Staff, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–5952.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease, caused by bacteria of the genus *Brucella*, that affects both animals and humans. The disease mainly affects cattle, bison, and swine; however, goats, sheep, horses, and humans are susceptible as well. In its principal animal hosts, it causes loss of young through spontaneous abortion or birth of weak offspring, reduced milk production, and infertility. There is no economically feasible treatment for brucellosis in livestock. In humans, brucellosis initially causes flu-like symptoms, but the disease may develop into a variety of chronic conditions, including arthritis. Humans can be treated for brucellosis with antibiotics.

The brucellosis regulations, contained in 9 CFR part 78 (referred to below as the regulations), provide a system for classifying States or portions of States according to the rate of *Brucella* infection present and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C are required to be placed under Federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the 12 months preceding classification as Class Free. The Class C classification is for States or areas with the highest rate of brucellosis. Class B and Class A fall between these two extremes. Restrictions on moving cattle interstate become less stringent as a State approaches or achieves Class Free status.

The standards for the different classifications of States or areas entail (1) maintaining a cattle herd infection rate not to exceed a stated level during 12 consecutive months; (2) tracing back to the farm of origin and successfully closing a stated percent of all brucellosis reactors found in the course of Market Cattle Identification (MCI) testing; (3) maintaining a surveillance system that includes testing of dairy herds, participation of all recognized slaughtering establishments in the MCI program, identification and monitoring of herds at high risk of infection (including herds adjacent to infected herds and herds from which infected animals have been sold or received), and having an individual herd plan in effect within a stated number of days after the herd owner is notified of the finding of brucellosis in a herd he or she owns; and (4) maintaining minimum procedural standards for administering the program.

If a single herd in a Class Free State is found to be affected with brucellosis, the State may retain its Class Free status if it meets the conditions described in paragraph (b)(4) of the definition of *Class Free State or area* in § 78.1. A State may retain its status in this manner only once during any 2-year period. The following conditions must be satisfied within 60 days of the identification of the infected animal:

1. The affected herd must be immediately quarantined, tested for brucellosis, and depopulated; and

2. An epidemiological investigation must be performed and the investigation must confirm that brucellosis has not spread from the affected herd. All herds on premises adjacent to the affected herd (adjacent herds), all herds from which animals may have been brought into the affected herd (source herds), and all herds that may have had contact with or accepted animals from the affected herd (contact herds) must be

epidemiologically investigated, and each of those herds must be placed under an approved individual herd plan. If the investigating epidemiologist determines that a herd blood test for a particular adjacent herd, source herd, or contact herd is not warranted, the epidemiologist must include that determination, and the reasons supporting it, in the individual herd plan.

After the close of the 60-day period following the identification of the infected animal, the Animal and Plant Health Inspection Service (APHIS) will conduct a review to confirm that the requirements have been satisfied and that the State is in compliance with all other applicable provisions.

Prior to the publication of this interim rule, Montana was classified as a Class Free State. On May 18, 2007, we confirmed the discovery of a brucellosis-affected herd in Montana. In accordance with § 78.1, the State took immediate measures to maintain its Class Free status. However, on June 9, 2008, another brucellosis-affected herd was confirmed. With the discovery of the second affected herd within 2 years, Montana no longer meets the standards for Class Free status. Therefore, we are removing Montana from the list of Class Free States or areas in § 78.41(a) and adding it to the list of Class A States or areas in § 78.41(b).

To attain and maintain Class A status, a State or area must (1) not exceed a cattle herd infection rate, due to field strain *Brucella abortus*, of 0.25 percent or 2.5 herds per 1,000 based on the number of reactors found within the State during any 12 consecutive months, except in States with 10,000 or fewer herds; (2) trace to the farm of origin at least 90 percent of all brucellosis reactors found in the course of MCI testing; (3) successfully close at least 95 percent of the MCI reactor cases traced to the farm of origin during the 12 consecutive month period immediately prior to the most recent anniversary of the date the State or area was classified Class A; and (4) have a specified surveillance system, as described above, including an approved individual herd plan in effect within 15 days of locating a source herd or recipient herd. After reviewing the brucellosis program records for Montana, we have concluded that this State meets the standards for Class A status.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the interstate spread of brucellosis. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

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

Executive Order 12866 and Regulatory Flexibility Act

This 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.

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

We are amending the brucellosis regulations concerning interstate movement of cattle by changing the classification of Montana from Class Free to Class A. We have determined that Montana no longer meets the standards for Class Free status. This action is necessary to prevent the interstate spread of brucellosis.

A reclassification from Class Free to Class A status with respect to brucellosis will result in movement restrictions. Specifically, all bovine animals moved interstate, except those moving directly to slaughter or to quarantined feedlots, must test negative to a brucellosis test 30 days prior to interstate movement.

Costs of brucellosis testing depend on a number of factors such as the location of the herd, veterinarian fees (subject to the veterinarian's discretion), and the laboratory blood test fee. Private veterinary practitioners in Montana charge an average of $6.00 per head for the test, including shipping and testing of the blood sample. In addition, there is a ''farm call'' charge that can range from $20 to over $200, depending on the distance traveled by the veterinarian and the number of animals tested. Based on these charges, the estimated average cost for brucellosis testing is between $7.50 and $15 per head.[1] Considering the average value per head of cattle in Montana was $1,050 in 2007, costs to producers associated with brucellosis testing are expected to range between 0.7 and 1.4 percent of the value of the cattle moved interstate. Costs for any single herd owner will depend upon the volume of non-slaughter cattle that the owner moves interstate. Many operations are already bearing these testing costs; since June 11, 2008, 10 surrounding States have issued movement requirements in response to the Montana brucellosis findings that include a negative brucellosis test 30 days prior to movement.[2]

In 2001, about 818,000 head of cattle (excluding ones destined for immediate slaughter) were moved out of Montana to 22 other States, with the majority shipped to Colorado, Iowa, Kansas, Minnesota, South Dakota and Wyoming.[3] These cattle represented about one-third of Montana's total 2001 cattle inventory. Assuming that a similar percentage currently moves interstate (other than for immediate slaughter or to quarantined feedlots), the estimated direct industry cost to Montana livestock operations of the State's reclassification from Class Free to Class A could range between approximately $6 million and $12 million per year.[4] The upper value is less than 0.5 percent of the total value of the Montana cattle herd.

Additionally, Montana sellers of non-slaughter cattle to other States may face a price discount because of the State's loss of Class Free status. Various market factors influencing the price of cattle make it difficult to predict the size of the price discount.

Despite the costs incurred by Montana operations, the overall economic effect of this action will be positive in preventing brucellosis from spreading to other States. Studies indicate the costs of producing beef and milk could increase by an estimated $80 million annually in less than 10 years if movement restrictions and other requirements of the Cooperative State–Federal Brucellosis Eradication Program were discontinued.[5]

[1] Donch, Debra. National Brucellosis Epidemiologist, USDA/APHIS/Veterinary Services. Information confirmed by Dr. Bret Thompson, Veterinary Medical Officer in Montana. Personal communication 7/31/08.

[2] Montana Department of Livestock. Testing Requirements. 7/28/08. States include California, Colorado, Georgia, Idaho, Kansas, Nebraska, North Dakota, South Dakota, Washington, and Wyoming. *http://liv.mt.gov/Brucellosis/index.asp.*

[3] Economic Research Service Data Sets. Interstate Livestock Movements: State-to-State Flows. Compiled in 2001 from State veterinary certificates. *http://www.ers.usda.gov/Data/InterstateLivestockMovements/View.asp.* No data were listed for many States, including the western States of Arizona, Nebraska, New Mexico, Oklahoma, Utah, or Washington.

[4] (2.4 million head)(0.33)($7.50 per head) = $5.9 million. (2.4 million head)(0.33)($15.00 per head) = $11.9 million.

[5] APHIS/USDA. ''Facts About Brucellosis.'' Animal Health, Brucellosis Disease Information. P. 2. *http://www.aphis.usda.gov/animal_health/*

Impact on Small Entities

In 2007, there were 12,400 cattle operations in Montana with a total inventory of approximately 2.4 million head. Industry statistics indicate that the average value of cattle in Montana for 2007 was $1,050 per head, yielding a total estimated cattle herd value of $2.52 billion.[6]

Based on data from the 2002 Census of Agriculture and Small Business Administration (SBA) guidelines, we expect a majority of operations affected by the interim rule will be small entities. Entities that comprise the North American Industry Classification System (NAICS) categories of beef cattle ranching and farming (NAICS 112111) and dairy cattle and milk production (NAICS 112120) are considered small if their total annual receipts do not exceed $750,000. The 2002 Census of Agriculture indicates that 99 percent of entities within NAICS 112111, and 89 percent of entities within NAICS 112120, earned less than $500,000 annually. Most, if not all, of the beef and dairy herds in Montana are considered small entities.

The Animal Health Protection Act (7 U.S.C. 8301 *et seq.*) provides the statutory authority for APHIS to carry out operations and measures to detect, control, and eradicate brucellosis. While this change in status will result in additional requirements for interstate movement of cattle for Montana producers, the benefits of the restriction in preventing the spread of brucellosis to other parts of the United States outweighs the additional costs of brucellosis testing. APHIS does not expect additional costs to have a significant impact on a substantial number of small entities. This rulemaking is necessary on an emergency basis to prevent the interstate spread of brucellosis.

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

Executive Order 12372

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

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict 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 interim rule contains no 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 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 9 CFR part 78 as follows:

PART 78—BRUCELLOSIS

■ 1. The authority citation for part 78 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

§ 78.41 [Amended]

■ 2. Section 78.41 is amended as follows:

■ a. In paragraph (a), by removing the word ''Montana,''.

■ b. In paragraph (b), by removing the word ''None'' and adding the word ''Montana'' in its place.

Done in Washington, DC, this 27th day of August 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–20374 Filed 9–2–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 430

[Docket No. 2007–0046]

Control of Listeria monocytogenes in Ready-To-Eat Meat and Poultry Products

AGENCY: Food Safety and Inspection Service (FSIS), USDA.

ACTION: Interim final rule; schedule for review under section 610 requirements.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing that it did not conduct a review of the interim final rule, Control of *Listeria monocytogenes* in Ready-to-Eat Meat and Poultry Products, in 2007 as stated in its amended schedule plan for reviewing regulations under Section 610 of the Regulatory Flexibility Act, as amended. The Agency has decided to wait until it publishes a final rule in this proceeding before amending its plan so it can conduct a review of that final rule instead of the interim final rule.

FOR FURTHER INFORMATION CONTACT: For further information contact Rachel Edelstein, Director, Policy Issuances Division, FSIS, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 3538, Washington, DC 20250–3700, (202) 202/720–5627.

SUPPLEMENTARY INFORMATION:

Background

Section 610 of the Regulatory Flexibility Act (RFA), as amended (5 U.S.C. 601–612), requires that all Federal agencies review any regulations that have been identified as having a significant economic impact upon a substantial number of small entities as a means to determine whether the associated impact can be minimized by considering the following factors: (1) The continued need for the rule; (2) the nature of the complaints or comments received concerning the rule from the public; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other Federal rules; and (5) the length of time since the rule has been initially evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

On January 28, 2005, FSIS published an amended scheduling plan in the **Federal Register** (70 FR 4047) for reviewing regulations. This plan scheduled a review in 2007 of the interim final rule, Control of *Listeria monocytogenes* in Ready-to-Eat Meat and Poultry Products (68 FR 34208; June 6, 2003). Because FSIS intends to issue a final rule in this rulemaking, it does not plan to review the interim final rule. Once the Agency publishes the final rule, it will amend its plan so it will be able to properly assess the impact of the final rule.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://*

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animal_diseases/brucellosis/downloads/bruc-facts.pdf. Accessed 8/4/08.

[6] National Agricultural Statistics Service/U.S. Department of Agriculture (USDA). Agricultural Statistics 2007. *http://www.nass.usda.gov/Statistics_by_State/Montana/index.asp.*

www.fsis.usda.gov/regulations_&_policies/2008_Notices_Index/index.asp.

FSIS also will 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 our constituents and stakeholders. The Update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The Update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, 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.

Done at Washington, DC, on August 27, 2008.

Alfred V. Almanza,

Administrator.

[FR Doc. E8–20368 Filed 9–2–08; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0550; Airspace Docket 08–AEA–21]

Modification of Class D and Class E Airspace; Rome, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action modifies the Class D and E airspace at Griffiss Airfield in Rome, NY. After the development of specific Departure Procedures (DPs) at the airfield, it was determined the Class D and E Surface airspace should be reduced in size to facilitate a more efficient operation. This rule increases the safety and management of the National Airspace System (NAS) around Griffiss Airfield.

DATES: Effective 0901 UTC, November 20, 2008. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments should be received no later than October 3, 2008.

ADDRESSES: Send comments on this rule to: U. S. Department of Transportation, Docket Operations, West Building, Ground Floor, Room W12–140, 1200 New Jersey, SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2008–0550; Airspace Docket No. 08–AEA–21, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov*.

You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Operations Support, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. The FAA has determined that this rule only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. This rule is effective and there will be no further action by the FAA unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period. If the FAA receives, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. An electronic copy of this document may be downloaded from and comments may be submitted and reviewed at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the **Federal Register's** Web page at *http://www.gpoaccess.gov/fr/index.html*. Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES** above or through the Web site. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Those wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2008–0550; Airspace Docket No. 08–AEA–21.'' The postcard will be date stamped and returned to the commenter.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 modifies Class D and E2 airspace at Rome, NY by reducing the controlled airspace, extending upward from the surface of the Earth to support IFR operations at Griffiss Airfield to a 5.0-mile radius with minor extensions for arrivals. Class D and E2 Surface airspace is usually predicated on departures from an airport with a control tower climbing at a standard rate of climb in random

directions until reaching 700 feet above the surface of the Earth. Additionally, the point an aircraft reaches the 1000-foot point Above Ground Level (AGL) while descending on a Standard Instrument Approach determines extensions to the Class D and E2 airspace. On September 7, 2007, airspace was developed around the Griffiss Airfield to encompass this requirement (72 FR 51357). The criteria at that time required the airspace to be an 8.4-mile radius of the airport because of rising terrain. Since that date, Departure Procedures (DPs) have been developed requiring aircraft to climb on specific headings until reaching that 700-foot AGL altitude prior to turning. This required procedure allows for the reduction in size of the current Class D and E2 airspace facilitating a more efficient operation. This Docket provides for that reduction.

Class D and E2 airspace designations for airspace areas extending upwards from the surface of the Earth are published in Paragraph 5000 and 6002 respectively, of FAA Order 7400.9R, dated August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class D and E2 airspace designations listed in this document will be published subsequently in the Order.

Agency Findings

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

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States code. 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.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the Class D and E2 airspace at Griffiss Airfield in Rome, NY.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9R, Airspace Designations and Reporting Points, dated August 15, 2007, and effective September 15, 2007, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AEA NY D Rome, NY [Revised]

Griffiss Airfield, NY
(Lat. 43°14′02″ N, Long. 75°24′25″ W)

That airspace extending upward from the surface of the Earth to and including 3,000 feet MSL within a 5.0-mile radius of the Griffiss Airfield and within 1.2 miles each side of the 331° bearing from the airport to 5.6 miles northwest of the airfield and within 1.3 miles each side of the 152° bearing from the Griffiss Airfield to 5.1 miles southeast of the Airfield. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

AEA NY E2 Rome, NY [Revised]

Griffiss Airfield, NY
(Lat. 43°14′02″ N, Long. 75°24′25″ W)

That airspace extending upward from the surface of the Earth within a 5.0-mile radius of the Griffiss Airfield and within 1.2 miles each side of the 331° bearing from the airport to 5.6 miles northwest of the airfield and within 1.3 miles each side of the 152° bearing from the Griffiss Airfield to 5.1 miles southeast of the Airfield. This Class E Surface airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on August 4, 2008.

Mark D. Ward,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. E8–19568 Filed 9–2–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0457; Airspace Docket No. 08–AAL–16]

Revision of Class E Airspace; Red Dog, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects two errors in the airspace description contained in a Final Rule that was published in the **Federal Register** on Friday, July 25, 2008 (73 FR 43351), Airspace Docket No. 08–AAL–16.

DATES: Effective Date: 0901 UTC, September 25, 2008.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail. Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

History

Federal Register Document E8–16962, Airspace Docket No. 08–AAL–16, published on Friday, July 25, 2008 (73 FR 43351), revised Class E airspace at Red Dog, AK. An error was discovered in the airspace description that misidentified the airfield location. A

typographical error in the description was also identified. This action corrects these two errors.

Correction to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the airspace description of the Class E airspace published in the **Federal Register**, Friday, July 25, 2008 (73 FR 43351), (FR Doc E8–16962, page 43351, column 3) is corrected as follows:

§ 71.1 [Corrected]

* * * * *

AAL AK E5 Red Dog, AK [Corrected]

Red Dog, AK

(Lat. 68°01′56″ N., Long. 162°53′57″ W.)

That airspace extending upward from 700 feet above the surface within an 11-mile radius of the Red Dog Airport, AK, and within 4 miles either side of the 219° bearing from the Red Dog Airport, AK, extending from the 11-mile radius to 14.5 miles southwest of the Red Dog Airport, AK; and that airspace extending upward from 1,200 feet above the surface within a 72.5-mile radius of the Red Dog Airport, AK.

* * * * *

Issued in Anchorage, AK, on August 22, 2008.

James Miller,

Acting Manager, Alaska Flight Service Information Area Group.

[FR Doc. E8–20313 Filed 9–2–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30622; Amdt. No. 3282]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective September 3, 2008. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 3, 2008.

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

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

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

SUPPLEMENTARY INFORMATION: This rule amends title 14 of the Code of Federal Regulations, part 97 (14 CFR part 97), by Establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPS. The complete regulators description of Each SIAP and its associated Takeoff Minimums or ODP for an Identified airport is listed on FAA form documents which are Incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the Associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPS and Takeoff Minimums and ODPS, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff

Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC, on August 8, 2008.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Under title 14, Code of Federal Regulations, part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

Effective 28 AUG 2008

Manchester, NH, Manchester, ILS OR LOC/DME RWY 17, Amdt 1
Manchester, NH, Manchester, RNAV (GPS) Y RWY 17, Orig
Manchester, NH, Manchester, RNAV (RNP) Z RWY 17, Orig

Effective 25 SEP 2008

Anvik, AK, Anvik, GPS RWY 35, Orig, CANCELLED
Anvik, AK, Anvik, RNAV (GPS) RWY 17, Orig
Anvik, AK, Anvik, RNAV (GPS) RWY 35, Orig
Anvik, AK, Anvik, Takeoff Minimums and Obstacle DP, Orig
Galena, AK, Edward G. Pitka, SR, GPS RWY 07, Orig, CANCELLED
Galena, AK, Edward G. Pitka, SR, GPS RWY 25, Orig, CANCELLED
Galena, AK, Edward G. Pitka, SR, RNAV (GPS) RWY 7, Orig
Galena, AK, Edward G. Pitka, SR, RNAV (GPS) RWY 25, Orig
Huslia, AK, Huslia, RNAV (GPS) RWY 3, Amdt 2
Huslia, AK, Huslia, RNAV (GPS) RWY 21, Amdt 2
Huslia, AK, Huslia, Takeoff Minimums and Obstacle DP, Orig
Benton, AR, Saline County Regional, RNAV (GPS) RWY 2, Orig
Benton, AR, Saline County Regional, RNAV (GPS) RWY 20, Orig
Little Rock, AR, Adams Field, ILS OR LOC RWY 22L, Orig
Little Rock, AR, Adams Field, ILS OR LOC RWY 22R, ILS RWY 22R (CAT II), ILS RWY (CAT III), Amdt 2
Little Rock, AR, Adams Field, LOC RWY 22L, Orig, CANCELLED
Little Rock, AR, Adams Field, Takeoff Minimums and Obstacle DP, Amdt 8
Magnolia, AR, Magnolia Muni, RNAV (GPS) RWY 36, Amdt 1
Newport, AR, Newport Muni, GPS RWY 18, Orig-B, CANCELLED
Newport, AR, Newport Muni, GPS RWY 36, Orig-B, CANCELLED
Newport, AR, Newport Muni, RNAV (GPS) RWY 18, Orig
Newport, AR, Newport Muni, RNAV (GPS) RWY 36, Orig
Newport, AR, Newport Muni, Takeoff Minimums and Obstacle DP, Orig
Arcata/Eureka, CA, Arcata, GPS RWY 32, Orig, CANCELLED
Arcata/Eureka, CA, Arcata, RNAV (GPS) RWY 32, Orig
Burbank, CA, Bob Hope, RNAV (RNP) Z RWY 8, Orig
Merced, CA, Merced Muni/Macready Field, GPS RWY 30, Orig-B, CANCELLED
Merced, CA, Merced Muni/Macready Field, RNAV (GPS) RWY 30, Orig
Santa Barbara, CA, Santa Barbara Muni, RNAV (GPS) RWY 7, Orig-A
Truckee, CA, Truckee-Tahoe, Takeoff Minimums and Obstacle DP, Amdt 4
Aspen, CO, Aspen-Pitkin County/Sardy Field, Takeoff Minimums and Obstacle DP, Amdt 8
Denver, CO, Front Range, GPS RWY 35, Orig, CANCELLED
Denver, CO, Front Range, ILS OR LOC RWY 26, Amdt 4
Denver, CO, Front Range, NDB RWY 26, Amdt 4
Denver, CO, Front Range, RNAV (GPS) RWY 17, Orig
Denver, CO, Front Range, RNAV (GPS) RWY 26, Orig
Denver, CO, Front Range, RNAV (GPS) RWY 35, Orig
Rifle, CO, Garfield County Regional, GPS RWY 8, Orig-A, CANCELLED
Rifle, CO, Garfield County Regional, GPS RWY 26, Orig-A, CANCELLED
Rifle, CO, Garfield County Regional, ILS RWY 26, Amdt 1
Rifle, CO, Garfield County Regional, LOC/DME-A, Amdt 7
Rifle, CO, Garfield County Regional, RNAV (GPS) W RWY 26, Orig
Rifle, CO, Garfield County Regional, RNAV (GPS) X RWY 26, Orig
Rifle, CO, Garfield County Regional, RNAV (GPS) Y RWY 8, Orig
Rifle, CO, Garfield County Regional, RNAV (RNP) Y RWY 26, Orig
Rifle, CO, Garfield County Regional, RNAV (RNP) Z RWY 8, Orig
Rifle, CO, Garfield County Regional, RNAV (RNP) Z RWY 26, Orig
Rifle, CO, Garfield County Regional, VOR/DME-C, Amdt 1
Orlando, FL, Orlando Sanford Intl, RNAV (GPS) RWY 9L, Amdt 2
Orlando, FL, Orlando Sanford Intl, RNAV (GPS) RWY 9R, Orig
Orlando, FL, Orlando Sanford Intl, RNAV (GPS) RWY 27R, Amdt 1
Orlando, FL, Orlando Intl, Takeoff Minimums and Obstacle DP, Amdt 1
Palm Coast, FL, Flagler County, RNAV (GPS) RWY 6, Amdt 1
Palm Coast, FL, Flagler County, RNAV (GPS) RWY 11, Amdt 1
Tampa, FL, Tampa Intl, LOC RWY 36R, Amdt 2
Tampa, FL, Tampa Intl, RNAV (GPS) RWY 36R, Amdt 1
Gainesville, GA, Lee Gilmer Memorial, ILS OR LOC/DME RWY 5, Orig
Gainesville, GA, Lee Gilmer Memorial, LOC RWY 4, Amdt 5D, CANCELLED
Gainesville, GA, Lee Gilmer Memorial, RNAV (GPS) RWY 5, Amdt 1
Gainesville, GA, Lee Gilmer Memorial, RNAV (GPS) RWY 23, Amdt 1
Washington, GA, Washington-Wilkes County, RNAV (GPS) RWY 13, Amdt 1
Washington, GA, Washington-Wilkes County, RNAV (GPS) RWY 31, Amdt 1
Denison, IA, Denison Muni, NDB RWY 30, Amdt 6
Denison, IA, Denison Muni, RNAV (GPS) RWY 12, Amdt 1
Denison, IA, Denison Muni, RNAV (GPS) RWY 30, Amdt 1
Denison, IA, Denison Muni, Takeoff Minimums and Obstacle DP, Orig
Perry, IA, Perry Muni, GPS RWY 32, Orig-A, CANCELLED
Perry, IA, Perry Muni, RNAV (GPS) RWY 32, Orig
Perry, IA, Perry Muni, Takeoff Minimums and Obstacle DP, Orig
Chicago, IL, Chicago O'Hare Intl, ILS OR LOC RWY 10, ILS RWY 10 (CAT II), ILS RWY 10 (CAT III), Amdt 16
Chicago, IL, Chicago O'Hare Intl, ILS OR LOC RWY 28, ILS RWY 28 (CAT II), ILS RWY 28 (CAT III), Amdt 15
Chicago, IL, Chicago O'Hare Intl, RNAV (GPS) RWY 10, Amdt 3
Chicago, IL, Chicago O'Hare Intl, RNAV (GPS) RWY 28, Amdt 2
Pekin, IL, Pekin Muni, RNAV (GPS) RWY 9, Orig
Pekin, IL, Pekin Muni, RNAV (GPS) RWY 27, Orig

Pekin, IL, Pekin Muni, Takeoff Minimums and Obstacle DP, Orig
Pekin, IL, Pekin Muni, VOR-A, Amdt 7
Pekin, IL, Pekin Muni, VOR/DME RNAV OR GPS RWY 9, Amdt 5A, CANCELLED
Robinson, IL, Robinson Muni, RNAV (GPS) RWY 9, Orig
Robinson, IL, Robinson Muni, RNAV (GPS) RWY 27, Orig
Robinson, IL, Robinson Muni, Takeoff Minimums and Obstacle DP, Orig
Fort Wayne, IN, Fort Wayne International, RNAV (GPS) RWY 5, Amdt 1
Fort Wayne, IN, Fort Wayne International, RNAV (GPS) RWY 23, Amdt 2
Indianapolis, IN, Eagle Creek Airpark, RNAV (GPS) RWY 21, Orig
Indianapolis, IN, Indianapolis Executive, RNAV (GPS) RWY 18, Orig
Indianapolis, IN, Indianapolis Executive, RNAV (GPS) RWY 36, Orig
Indianapolis, IN, Indianapolis Executive, Takeoff Minimums and Obstacle DP, Orig
Indianapolis, IN, Indianapolis Executive, VOR RWY 36, Amdt 9
Indianapolis, IN, Indianapolis Executive, VOR/DME RWY 18, Orig
Rochester, IN, Fulton County, RNAV (GPS) RWY 11, Amdt 1
Rochester, IN, Fulton County, RNAV (GPS) RWY 29, Amdt 1
Rochester, IN, Fulton County, Takeoff Minimums and Obstacle DP, Orig
Covington, KY, Cincinnati/Northern Kentucky Intl, ILS OR LOC RWY 9, Amdt 18
Covington, KY, Cincinnati/Northern Kentucky Intl, ILS OR LOC RWY 18C, Amdt 22
Covington, KY, Cincinnati/Northern Kentucky Intl, ILS OR LOC RWY 18L, Amdt 7
Covington, KY, Cincinnati/Northern Kentucky Intl, ILS OR LOC RWY 18R; ILS RWY 18R (CAT II), Amdt 1
Covington, KY, Cincinnati/Northern Kentucky Intl, ILS OR LOC RWY 27, Amdt 17
Covington, KY, Cincinnati/Northern Kentucky Intl, ILS OR LOC RWY 36C; ILS RWY 36C (CAT II); ILS RWY 36C (CAT III), Amdt 41
Covington, KY, Cincinnati/Northern Kentucky Intl, ILS OR LOC RWY 36L; ILS RWY 36L, (CAT II), Amdt 1
Covington, KY, Cincinnati/Northern Kentucky Intl, ILS OR LOC RWY 36R; ILS RWY 36R (CAT II); ILS RWY 36R (CAT III), Amdt 8
Covington, KY, Cincinnati/Northern Kentucky Intl, RNAV (GPS) Y RWY 9, Amdt 1
Covington, KY, Cincinnati/Northern Kentucky Intl, RNAV (GPS) Y RWY 18C, Amdt 1
Covington, KY, Cincinnati/Northern Kentucky Intl, RNAV (GPS) Y RWY 18L, Amdt 1
Covington, KY, Cincinnati/Northern Kentucky Intl, RNAV (GPS) Y RWY 18R, Amdt 1
Covington, KY, Cincinnati/Northern Kentucky Intl, RNAV (GPS) Y RWY 27, Orig
Covington, KY, Cincinnati/Northern Kentucky Intl, RNAV (GPS) Y RWY 36C, Amdt 1
Covington, KY, Cincinnati/Northern Kentucky Intl, RNAV (GPS) Y RWY 36L, Amdt 1
Covington, KY, Cincinnati/Northern Kentucky Intl, RNAV (GPS) Y RWY 36R, Amdt 1
Covington, KY, Cincinnati/Northern Kentucky Intl, RNAV (RNP) Z RWY 9, Orig
Covington, KY, Cincinnati/Northern Kentucky Intl, RNAV (RNP) Z RWY 18C, Orig
Covington, KY, Cincinnati/Northern Kentucky Intl, RNAV (RNP) Z RWY 18L, Orig
Covington, KY, Cincinnati/Northern Kentucky Intl, RNAV (RNP) Z RWY 18R, Orig
Covington, KY, Cincinnati/Northern Kentucky Intl, RNAV (RNP) Z RWY 27, Orig
Covington, KY, Cincinnati/Northern Kentucky Intl, RNAV (RNP) Z RWY 36C, Orig
Covington, KY, Cincinnati/Northern Kentucky Intl, RNAV (RNP) Z RWY 36L, Orig
Covington, KY, Cincinnati/Northern Kentucky Intl, RNAV (RNP) Z RWY 36R, Orig
Henderson, KY, Henderson City-County, RNAV (GPS) RWY 9, Amdt 1
Henderson, KY, Henderson City-County, RNAV (GPS) RWY 27, Amdt 1
Louisville, KY, Louisville Intl-Standiford Fld, GPS RWY 17L, Orig, CANCELLED
Louisville, KY, Louisville Intl-Standiford Fld, GPS RWY 17R, Orig-A, CANCELLED
Louisville, KY, Louisville Intl-Standiford Fld, GPS RWY 35L, Orig-A, CANCELLED
Louisville, KY, Louisville Intl-Standiford Fld, GPS RWY 35R, Orig-A, CANCELLED
Louisville, KY, Louisville Intl-Standiford Fld, ILS OR LOC RWY 17L, Amdt 3
Louisville, KY, Louisville Intl-Standiford Fld, ILS OR LOC RWY 17R, Amdt 1
Louisville, KY, Louisville Intl-Standiford Fld, ILS OR LOC RWY 35L; ILS RWY 35L (CAT II); ILS RWY 35L (CAT III), Amdt 2
Louisville, KY, Louisville Intl-Standiford Fld, ILS OR LOC RWY 35R; ILS RWY 35R (CAT II); ILS RWY 35R (CAT III), Amdt 3
Louisville, KY, Louisville Intl-Standiford Fld, RNAV (GPS) RWY 17L, Orig
Louisville, KY, Louisville Intl-Standiford Fld, RNAV (GPS) RWY 17R, Orig
Louisville, KY, Louisville Intl-Standiford Fld, RNAV (GPS) RWY 35R, Orig
Louisville, KY, Louisville Intl-Standiford Fld, RNAV (GPS) Y RWY 35L, Orig
Louisville, KY, Louisville Intl-Standiford Fld, RNAV (RNP) Z RWY 35L, Orig
Detroit, MI, Willow Run, RNAV (GPS) RWY 9L, Amdt 1
Detroit, MI, Willow Run, RNAV (GPS) RWY 9R, Amdt 1
Detroit, MI, Willow Run, RNAV (GPS) RWY 14, Amdt 1
Owosso, MI, Owosso Community, RNAV (GPS) RWY 10, Amdt 1
Owosso, MI, Owosso Community, RNAV (GPS) RWY 28, Amdt 1
Owosso, MI, Owosso Community, VOR/DME RWY 28, Amdt 1
Jacksonville, NC, Albert J. Ellis, NDB RWY 5, Amdt 8
Jacksonville, NC, Albert J. Ellis, RNAV (GPS) RWY 5, Orig
Oxford, NC, Henderson-Oxford, LOC RWY 6, Amdt 1
Oxford, NC, Henderson-Oxford, NDB RWY 6, Amdt 2
Oxford, NC, Henderson-Oxford, RNAV (GPS) RWY 6, Orig
Oxford, NC, Henderson-Oxford, RNAV (GPS) RWY 24, Orig
Oxford, NC, Henderson-Oxford, Takeoff Minimums and Obstacle DP, Orig
Atlantic City, NJ, Atlantic City International, COPTER ILS OR LOC/DME RWY 13, Amdt 1B
Atlantic City, NJ, Atlantic City International, ILS OR LOC RWY 13, Amdt 8
Atlantic City, NJ, Atlantic City International, ILS OR LOC/DME RWY 31, Orig-A
Atlantic City, NJ, Atlantic City International, RNAV (GPS) RWY 4, Amdt 1A
Atlantic City, NJ, Atlantic City International, RNAV (GPS) RWY 13, Amdt 3
Atlantic City, NJ, Atlantic City International, RNAV (GPS) RWY 31, Amdt 2
Atlantic City, NJ, Atlantic City International, RADAR–1, Amdt 15
Atlantic City, NJ, Atlantic City International, VOR RWY 4, Amdt 15A
Atlantic City, NJ, Atlantic City International, VOR RWY 13, Amt 4A
Atlantic City, NJ, Atlantic City International, VOR RWY 31, Amdt 1
Reno, NV, Reno/Tahoe Intl, RNAV (GPS) X RWY 34L, Amdt 1
Reno, NV, Reno/Tahoe Intl, RNAV (GPS) X RWY 34R, Amdt 1
Reno, NV, Reno/Tahoe Intl, RNAV (GPS) Y RWY 16L, Amdt 1
Reno, NV, Reno/Tahoe Intl, RNAV (GPS) Y RWY 16R, Amdt 1
Reno, NV, Reno/Tahoe Intl, RNAV (GPS) Y RWY 34L, Orig
Reno, NV, Reno/Tahoe Intl, RNAV (GPS) Y RWY 34R, Orig
Reno, NV, Reno/Tahoe Intl, RNAV (RNP) Z RWY 16L, Orig
Reno, NV, Reno/Tahoe Intl, RNAV (RNP) Z RWY 16R, Orig
Reno, NV, Reno/Tahoe Intl, RNAV (RNP) Z RWY 34L, Orig
Reno, NV, Reno/Tahoe Intl, RNAV (RNP) Z RWY 34R, Orig
Hornell, NY, Hornell Muni, Takeoff Minimums and Obstacle DP, Amdt 4
Cleveland, OH, Cleveland-Hopkins Intl, ILS OR LOC RWY 24L, Amdt 20
London, OH, Madison County, GPS RWY 9, Amdt 1, CANCELLED
London, OH, Madison County, GPS RWY 27, Orig, CANCELLED
London, OH, Madison County, NDB RWY 9, Amdt 9
London, OH, Madison County, RNAV (GPS) RWY 9, Orig
London, OH, Madison County, RNAV (GPS) RWY 27, Orig
Portsmouth, OH, Greater Portsmouth Rgnl, GPS RWY 36, Amdt 1B, CANCELLED
Portsmouth, OH, Greater Portsmouth Rgnl, RNAV (GPS) RWY 18, Orig
Portsmouth, OH, Greater Portsmouth Rgnl, RNAV (GPS) RWY 36, Orig
Portsmouth, OH, Greater Portsmouth Rgnl, VOR/DME-A, Amdt 6
Portsmouth, OH, Greater Portsmouth Rgnl, VOR/DME RNAV OR GPS RWY 18, Amdt 6B, CANCELLED

Grove, OK, Grove Muni, RNAV (GPS) RWY 18, Amdt 1
Grove, OK, Grove Muni, Takeoff Minimums and Obstacle DP, Orig
Quakertown, PA, Quakertown, Takeoff Minimums and Obstacle DP, Orig
Fort Worth, TX, Bourland Field, Takeoff Minimums and Obstacle DP, Orig
Plains, TX, Yoakum County, RNAV (GPS) RWY 3, Orig
Plains, TX, Yoakum County, RNAV (GPS) RWY 21, Orig
Taylor, TX, Taylor Muni, Takeoff Minimums and Obstacle DP, Orig
Taylor, TX, Taylor Muni, VOR/DME RWY 17, Amdt 1
Waco, TX, TSTC-Waco, ILS OR LOC RWY 17L, Amdt 12
Waco, TX, TSTC-Waco, Takeoff Minimums and Obstacle DP, Orig
Moses Lake, WA, Grant County Intl, GPS RWY 4, Orig-B, CANCELLED
Moses Lake, WA, Grant County Intl, GPS RWY 14L, Orig-B, CANCELLED
Moses Lake, WA, Grant County Intl, GPS RWY 22, Orig-B, CANCELLED
Moses Lake, WA, Grant County Intl, RNAV (GPS) RWY 4, Orig
Moses Lake, WA, Grant County Intl, RNAV (GPS) RWY 14L, Orig
Moses Lake, WA, Grant County Intl, RNAV (GPS) RWY 22, Orig
Martinsburg, WV, Eastern WV Regional/Shepherd, RNAV (GPS) RWY 8, Orig
Martinsburg, WV, Eastern WV Regional/Shepherd, RNAV (GPS) RWY 26, Orig
Martinsburg, WV, Eastern WV Regional/Shepherd, Takeoff Minimums and Obstacle DP, Amdt 6
Martinsburg, WV, Eastern WV Regional/Shepherd, VOR-A, Amdt 9

On August 7, 2008 (73 FR 458660) the FAA published an Amendment in Docket No. 30620, Amdt No. 3280 to Part 97 of the Federal Aviation Regulations under section 97.31 effective September 25, 2008 which is corrected to read as follows:

Bangore, ME, Bangor Intl, RADAR–1, Amdt 4B

[FR Doc. E8–19514 Filed 9–2–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2008–0850]

RIN 1625–AA09

Drawbridge Operation Regulation; Plaquemine Brule Bayou, Midland, LA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the published drawbridge operation regulation for the draw of the Union Pacific railroad bridge across Plaquemine Brule Bayou, mile 5.1, at Midland, LA. It has been determined that this bridge no longer exists. Since the bridge no longer exists, the regulation controlling the opening and closing of the bridge is no longer necessary.

DATES: This rule is effective September 3, 2008.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2008–0850 and are available online at *http://www.regulations.gov*. This material is also available for inspection or copying at two locations: The Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the office of the Commander, Eighth Coast Guard District, Bridge Administration Branch, 500 Poydras Street, Room 1313, New Orleans, LA 70130–3310 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call David M. Frank, Bridge Administration Branch, telephone (504) 671–2128. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it has been determined that the bridge no longer exists and mariners do not have to request an opening of the draw.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**. There is no need to delay the implementation of this rule because the bridge it governs is already out of service and mariners are no longer required to request an opening.

Background and Purpose

A recent survey of the waterways within the District has determined that the Union Pacific railroad bridge across Plaquemine Brule Bayou, mile 5.1, at Midland, no longer exists. It is unclear when the bridge was removed from the waterway; however, mariners are no longer restricted from passing through the area because of a requirement to have the draw of the bridge opened. The regulation governing the operation of the bridge is found in 33 CFR 117.489(a). The purpose of this rule is to remove 33 CFR 117.489(a) from the Code of Federal Regulations since it governs a bridge that is no longer in existence.

Discussion of Rule

The Coast Guard is changing the regulation in 33 CFR 117 without publishing an NPRM. The change removes the regulation governing the bridge since the bridge no longer exists. This change does not affect vessel operators using the waterway. Thus, it is not necessary to publish an NPRM.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. The Coast Guard does not consider this rule to be ''significant'' under that Order because it does not affect the way vessels operate on the waterway.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule will not significantly impact any small entities because the bridge no longer exists and no longer affects vessel operators that would have required an opening of the draw.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 5100.1 and Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. § 117.489 is revised to read as follows:

§ 117.489 Plaquemine Brule Bayou.

The draw of the S91 bridge, mile 8.0 at Estherwood, shall open on signal from 5 a.m. to 9 p.m. if at least four hours notice is given. From 9 p.m. to 5 a.m., the draw shall open on signal if at least 12 hours notice is given.

Dated: August 25, 2008.

J.H. Korn,

Captain, U.S. Coast Guard, Commander, 8th Coast Guard District, Acting.

[FR Doc. E8–20362 Filed 9–2–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0835]

RIN 1625–AA00

Safety Zone; Waters Surrounding S/V FALLS OF CLYDE, HI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary 500-yard moving safety zone around the S/V FALLS OF CLYDE and her tow vessel(s) during transit within the Honolulu Captain of the Port Zone. The safety zone is established at the request of the Hawaii Maritime Center to protect vessels and persons from approaching too close to the dead-ship tow of the S/V FALLS OF CLYDE. Entry of persons or vessels into this temporary safety

zone is prohibited unless authorized by the Captain of the Port.

DATES: This rule is effective from 12:01 a.m. on September 2, 2008 until 11:59 p.m. on October 2, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0835 and are available on line at *http://www.regulations.gov*. They are also available for inspection or copying at two locations: The Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the U.S. Coast Guard Sector Honolulu, Waterways Management Division, 433 Ala Moana Blvd., Honolulu, HI 96813 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call Lieutenant Marcella Granquist, Waterways Management Division, U.S. Coast Guard Sector Honolulu, telephone 808–842–2600. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard was not given the final voyage plan in time to initiate full rulemaking, and the need for this temporary moving safety zone was not determined until less than 30 days before the general public will require the zone's protection. Publishing an NPRM and delaying the effective date would be contrary to the public interest since the transit would occur before completion of the rulemaking process, thereby jeopardizing the safety of the general public. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The COTP finds this good cause to be the immediate need for a safety zone to ensure public safety surrounding the transit of the unmanned S/V FALLS OF CLYDE from Honolulu Harbor to 12 nautical miles off shore of Oahu, HI.

Background and Purpose

On or after September 2, 2008 the dead-ship tow of the S/V FALLS OF CLYDE is scheduled to transit U.S. navigable waters in the Honolulu Captain of the Port Zone from the Honolulu Harbor to off the southern coast of Oahu, HI. The Coast Guard is establishing this safety zone to ensure the public's safety during the transit of the S/V FALLS OF CLYDE from the Honolulu Harbor entrance channel commencing at a line between channel buoys no. 1 and no. 2 to 12 nautical miles off the southern coast of Oahu, HI.

Discussion of Rule

This temporary safety zone is effective on or after 12:01 a.m. on September 2, 2008 until 11:59 p.m. on October 2, 2008. It is located within the Honolulu Captain of the Port Zone (See 33 CFR 3.70–10) and covers all U.S. navigable waters extending 500 yards in all directions from the S/V FALLS OF CLYDE and her tow vessel(s), from the surface of the water to the ocean floor. Unpredictable weather and sea states make a broad date and time range necessary to safely complete the transit. Enforcement periods would be announced over marine band VHF channel 16 prior to enforcement to ensure ample public notification. The safety zone moves with the dead-ship tow of the S/V FALLS OF CLYDE while in transit between the Honolulu Harbor main entrance channel commencing at a line between channel buoys no. 1 and no. 2 and up to 12 nautical miles off shore of Oahu, HI. The safety zone becomes fixed if the S/V FALLS OF CLYDE is anchored, position-keeping, or moored during any part of the aforementioned transit.

The S/V FALLS OF CLYDE is easy to recognize because it is a steel hulled, 280′ in length, 40′ at the beam, with four white colored masts, no sails or rigging, and the hull is painted with solid, horizontal, bands of black paint on the top third starting at the railings, grey paint in the middle, then red paint on the lower third towards the bottom, and a small thin horizontal stripe of yellow paint between the black and grey bands.

In accordance with the general regulations in 33 CFR Part 165, Subpart C, no person or vessel would be permitted to enter or remain in the zone except for support vessels/aircraft and support personnel, or other vessels authorized by the Captain of the Port or the District Commander. The Captain of the Port will cause notice of the enforcement of the safety zone described in this section to be made by broadcast notice to mariners. Any Coast Guard commissioned, warrant, or petty officer, and any other Captain of the Port representative permitted by law, may enforce the zone. Vessels, aircraft, or persons in violation of this proposed rule would be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders. This rule is not a ''significant regulatory action'' under § 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under § 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This expectation is based on the limited duration of the zone, the limited geographic area affected by it, and its ability to move with the vessel(s) in transit.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. We expect that there will be little or no

impact to small entities due to the narrow scope and nature of this safety zone. Also, vessel traffic will be allowed to pass safely around this moving safety zone. Additionally, before the effective period, we will issue maritime advisories widely available to users of the Honolulu Harbor, HI.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 5100.1 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded under the Instruction that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, under figure 2–1, paragraph (22) of the Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because this rule establishes a temporary moving safety zone and for less than 24 hours in duration.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T14–172 to read as follows:

§ 165.T14–172 Safety Zone; Waters Surrounding S/V FALLS OF CLYDE, HI.

(a) *Location.* The following area, in U.S. navigable waters within the Honolulu Captain of the Port Zone (See 33 CFR 3.70–10), from the surface of the water to the ocean floor, is a safety zone: All waters extending 500 yards in all directions from the S/V FALLS OF CLYDE and her tow vessel(s) during transit from the Honolulu Harbor main channel commencing at a line between channel buoys no. 1 and no. 2 to 12

nautical miles off shore of Oahu, HI. The safety zone moves with the S/V FALLS OF CLYDE and her tow vessel(s) while they are in transit and becomes fixed when the S/V FALLS OF CLYDE is anchored, position-keeping, or moored.

(b) *Effective period.* This section is effective from 12:01 a.m. on September 2, 2008 through 11:59 p.m. on October 2, 2008.

(c) *Regulations.* The general regulations governing safety zones contained in 33 CFR 165.23 apply. Entry, transit, or anchoring within this zone is prohibited unless authorized by the Captain of the Port Honolulu or the District Commander.

(d) *Enforcement.* The Coast Guard will begin enforcement of the safety zone described in this section upon the S/V FALLS OF CLYDE passing the Honolulu Harbor main entrance channel at buoys no. 1 and no. 2 of the U.S. navigable waters within the Honolulu Captain of the Port Zone.

(e) *Informational notice.* The Captain of the Port Honolulu will ensure notice of the enforcement of the safety zone described in this section is communicated by broadcast notice to mariners.

(f) *Authority to enforce.* Any Coast Guard commissioned, warrant, or petty officer, and any other Captain of the Port representative permitted by law, may enforce this temporary safety zone.

(g) *Waiver.* The Captain of the Port may waive any of the requirements of this rule for any person, vessel, or class of vessel upon finding that application of the safety zone is unnecessary or impractical for the purpose of maritime security.

(h) *Penalties.* Vessels or persons violating this rule are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Dated: August 20, 2008.

B.A. Compagnoni,

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

[FR Doc. E8–20361 Filed 9–2–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0829]

Safety Zone; Chicago Harbor, Navy Pier East, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Navy Pier East Safety Zone in Chicago Harbor on September 30, 2008. This action is necessary to protect vessels and people from the hazards associated with fireworks displays. This safety zone will restrict vessel traffic from a portion of the Captain of the Port Lake Michigan Zone.

DATES: Enforced from 8 p.m. to 10 p.m. on September 30, 2008.

FOR FURTHER INFORMATION CONTACT: LCDR Bannan, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7154.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Safety Zone, Navy Pier East, Chicago Harbor, Chicago, IL, 33 CFR 165.933 for the following event:

Bridgestone Conference on September 30, 2008 from 8 p.m. through 10 p.m.

All vessels must obtain permission from the Captain of the Port or his designated representative to enter, move within or exit the safety zone. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port or a designated representative. While within the safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice is issued under authority of 33 CFR 165.933 Safety Zone, Navy Pier East, Chicago Harbor, Chicago, IL and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of these enforcement periods via broadcast Notice to Mariners and Local Notice to Mariners.

The Captain of the Port or his designated representative will issue a Broadcast Notice to Mariners notifying the public if enforcement of the safety zone established by this section is suspended. The Captain of the Port or his designated representative may be contacted via U.S. Coast Guard Sector Lake Michigan on channel 16, VHF-FM.

Dated: August 8, 2008.

Bruce C. Jones,

Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.

[FR Doc. E8–20363 Filed 9–2–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0264]

RIN 1625–AA00

Safety Zone; Patchogue Bay, Patchogue, NY

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a safety zone for the Patchogue Grand Prix, a power boat race on Patchogue Bay off of Patchogue, New York. The safety zone provides for safety of navigation for the maritime public viewing and transiting near the power boat race. This safety zone is necessary to protect the maritime community from the hazards inherent with a power boat race, namely, a collision and loss of control of the power boats participating in this event. Entry into this zone is prohibited unless authorized by the Captain of the Port Long Island Sound.

DATES: This rule is effective on September 3, 2008.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2008–0264 and are available online at *http://www.regulations.gov.* This material is also available for inspection or copying at two locations: The Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays and at United States Coast Guard Sector Long Island Sound, 120 Woodward Avenue, New Haven, Connecticut, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call LT Douglas Miller, USCG Sector Long Island Sound Prevention Department at (203) 486–4459. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Submitting Comments

On June 12, 2008 we published a notice of proposed rulemaking (NPRM) entitled Safety Zone: Patchogue Bay,

Patchogue, NY in the **Federal Register** (73 FR 114). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This rule is needed to ensure the safety of the maritime public in the area of the powerboat race. Delaying the effective date would be contrary to the public interest, since immediate action is necessary to ensure the public's safety. Furthermore, the NPRM for this rule was published on June 12, 2008 and no comments were received from the public. In addition to the NPRM notification, notification of the safety zone will be made through marine information broadcasts and local notice to mariners.

Background and Purpose

OPA Racing LLC of Brick, NJ is sponsoring an annual power boat race in Patchogue Bay, Patchogue, NY on the 22nd, 23rd and 24th of August 2008, and for a three day period on a recurring basis each year thereafter. A safety zone is necessary to protect the maritime community from the hazards associated with the power boat race. The safety zone will be enforced from 11 a.m. to 5 p.m on each day of the three day event to accommodate the practice sessions and the race.

Patchogue Bay is located on the south shore of Long Island, New York. The boat race consists of approximately 40 power boats performing at high rates of speed in close proximity to each other while operating over a specified race course in an area of Patchogue Bay, Patchogue, NY. The Coast Guard is establishing this safety zone in order to provide for the safety of the maritime community and the spectators viewing the power boats should an accident, such as a collision of the competing power boats, occur during the race.

Discussion of Rule

The safety zone will be enforced during the testing of the powerboats on August 22nd and 23rd, 2008 and during the day of the race, August 24, 2008. In future years, the safety zone will also be enforced for the two planned testing days and on the day of the race. Specific dates will be announced in the **Federal Register**. On the specified days, the safety zone will be enforced from 11 a.m. until 5 p.m. during the event and testing sessions. This time period will provide sufficient opportunity to clear the safety zone area prior to the testing session and the start of the race, as well as additional time should testing or the race run longer than the intended period. Coast Guard Sector Long Island Sound will cause notice of the enforcement of the safety zone to be made by all appropriate means to ensure the widest publicity among the affected segments of the public and will include publication in the local notice to mariners, marine information broadcasts, and facsimile. The safety zone will be established on the navigable waters of Patchogue Bay as bounded by the following geographic coordinates: Beginning at a point on land in Patchogue, NY at approximate position 40°44′56″ N, 073°00′49″ W, then running south to a point in Patchogue Bay at approximate position 40°44′29″ N, 073°00′49″ W; then running southeast to a point in Great South Bay at approximate position 40°43′47″ N, 072°59′54″ W; then running east to approximate position 40°43′53″ N, 072°58′46″ W; then to approximate position 40°43′57″ N, 072°57′06″ W, then north to a point on land at approximate position 40°44′29″ N, 072°57′09″ W. All coordinates are North American Datum 1983.

The Captain of the Port anticipates minimal negative impact on vessel traffic because of this safety zone due to the limited area covered by this safety zone and the short enforcement period. Any violation of the safety zone described herein would be punishable by, among others, civil and criminal penalties, *in rem* liability against the offending vessel, and license sanctions.

Regulatory Analyses

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

Regulatory Planning and Review

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. This regulation may have some impact on the public, but the potential impact will be minimized for the following reasons: The zone will only be enforced for a maximum of eight hours on three specific days, and vessels may transit in all areas around the zone at all times.

Small Entities

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

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

This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in those portions of Patchogue Bay, Patchogue, New York and marinas located within Patchogue Bay covered by the safety zone that temporarily may not be able to receive customers. The economic impact on these small entities is not significant as vessels will be able to transit around the safety zone and in all other navigable portions of Patchogue Bay while the safety zone is being enforced and vessels desiring to transit to marinas located within the vicinity of the safety zone may request permission from the Captain of the Port to enter and transit the zone. No comments were received regarding the economic impact on small entities and the original assessment of impact on small entities was not changed in this rulemaking.

Assistance for Small Entities

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

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

about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.158 to read as follows:

§ 165.158 Safety Zone: Patchogue Grand Prix, Patchogue Bay, Patchogue, NY.

(a) *Location.* The following area is a safety zone: All navigable waters of Patchogue Bay, NY bounded by an area beginning at a point on land in Patchogue, NY at approximate position 40°44′56″ N, 073°00′49″ W; then running south to a point in Patchogue Bay at approximate position 40°44′29″ N, 073°00′49″ W; then running south east to a point in Great South Bay at approximate position 40°43′47″ N, 072°59′54″ W; then running east to approximate position 40°43′53″ N, 072°58′46″ W; then to approximate position 40°43′57″ N, 072°57′06″ W; then north to a point on land at approximate position 40°44′29″ N, 072°57′09″ W. All coordinates are North American Datum 1983.

(b) *Definitions.* The following definitions apply to this section: *Designated on-scene patrol personnel,* means any commissioned, warrant and petty officers of the U.S. Coast Guard operating Coast Guard vessels who has been authorized to act on the behalf of the Captain of the Port Long Island Sound.

(c) *Regulations.* (1) The general regulations contained in 33 CFR § 165.23 apply.

(2) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port Long Island Sound.

(3) All persons and vessels must comply with the Coast Guard Captain of the Port or the designated on-scene patrol personnel.

(4) Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing

light or other means, the operator of the vessel must proceed as directed.

(5) Persons and vessels may request permission to enter the zone on VHF–16 or via phone at (203) 468–4401.

(d) *Enforcement Period.* This rule will be enforced from 11 a.m. to 5 p.m. on August 22, 23, and 24, 2008 and each year thereafter at dates and times specified in a **Federal Register** notice.

Dated: August 7, 2008.

Daniel A. Ronan,

Captain, U.S. Coast Guard, Captain of the Port Long Island Sound.

[FR Doc. E8–20360 Filed 9–2–08; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2008–0086, EPA–HQ–SFUND–2008–0085, EPA–HQ–SFUND–2008–0081, EPA–HQ–SFUND–2008–0082, EPA–HQ–SFUND–2007–0690, EPA–HQ–SFUND–2008–0084; FRL–8710–8]

RIN 2050–AD75

National Priorities List, Final Rule

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA'' or ''the Act''), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the Agency'') in determining which sites warrant further investigation. These further investigations will allow EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule adds six sites to the General Superfund Section of the NPL.

DATES: *Effective Date:* The effective date for this amendment to the NCP is October 3, 2008.

ADDRESSES: For addresses for the Headquarters and Regional dockets, as well as further details on what these dockets contain, see section II, ''Availability of Information to the Public'' in the **SUPPLEMENTARY INFORMATION** portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Robert Myers, phone (703) 603–8851, *myers.robert@epa.gov,* Site Assessment and Remedy Decisions Branch, Assessment and Remediation Division, Office of Superfund Remediation and Technology Innovation (mail code 5204P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

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I. Background

A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases or threatened releases of hazardous substances, and releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What Is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, or releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining

priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action.'' ''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases of hazardous substances, pollutants or contaminants (42 U.S.C. 9601(23)).

C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the ''General Superfund Section''), and one of sites that are owned or operated by other Federal agencies (the ''Federal Facilities Section''). With respect to sites in the Federal Facilities Section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing a Hazard Ranking System (''HRS'') score and determining whether the facility is placed on the NPL. EPA's role is less extensive than at other sites.

D. How Are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the HRS, which EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening tool to evaluate the relative potential of uncontrolled hazardous substances, pollutant or contaminants to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL. (2) Pursuant to 42 U.S.C. 9605(a)(8)(B), each State may designate a single site as its top priority to be listed on the NPL, without any HRS score. This provision of CERCLA requires that, to the extent practicable, the NPL include one facility designated by each State as the greatest danger to public health, welfare, or the environment among known facilities in the State. This mechanism for listing is set out in the NCP at 40 CFR 300.425(c)(2). (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without any HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658) and generally has updated it at least annually.

E. What Happens to Sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions * * *.'' 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. Does the NPL Define the Boundaries of Sites?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation) for it to do so. Indeed, the precise nature and extent of the site are typically not known at the time of listing.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. However, the NPL site is not necessarily coextensive with the boundaries of the installation or plant, and the boundaries of the installation or plant are not necessarily the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location where that contamination has come to be located, or from where that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the ''Jones Co. plant site'') in terms of the property owned by a particular party, the site, properly understood, is not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to, nor confined by, the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. In addition, the site name is merely used to help identify the geographic location of the contamination, and is not meant to constitute any determination of liability at a site. For example, the name

''Jones Co. plant site,'' does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the Remedial Investigation (''RI'') ''is a process undertaken * * * to determine the nature and extent of the problem presented by the release'' as more information is developed on site contamination, and which is generally performed in an interactive fashion with the Feasibility Study (''FS'') (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, the HRS inquiry focuses on an evaluation of the threat posed and therefore the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, it can submit supporting information to the Agency at any time after it receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How Are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required.

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required.

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

H. May EPA Delete Portions of Sites From the NPL as They Are Cleaned Up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and made available for productive use.

I. What Is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or (3) the site qualifies for deletion from the NPL. For the most up-to-date information on the CCL, see EPA's Internet site at *http://www.epa.gov/superfund.*

J. What Is the Sitewide Ready for Anticipated Use Measure?

The Sitewide Ready for Anticipated Use measure (formerly called Sitewide Ready-for-Reuse) represents important Superfund accomplishments and the measure reflects the high priority EPA places on considering anticipated future land use as part of our remedy selection process. See Guidance for Implementing the Sitewide Ready-for-Reuse Measure, May 24, 2006, OSWER 9365.0–36. This measure applies to final and deleted sites where construction is complete, all cleanup goals have been achieved, and all institutional or other controls are in place. EPA has been successful on many occasions in carrying out remedial actions that ensure protectiveness of human health and the environment, including current and future land users, in a manner that allows contaminated properties to be restored to environmental and economic vitality while ensuring protectiveness for current and future land users. For further information, please go to *http://www.epa.gov/superfund/programs/recycle.*

II. Availability of Information to the Public

A. May I Review the Documents Relevant to This Final Rule?

Yes, documents relating to the evaluation and scoring of the sites in this final rule are contained in dockets located both at EPA Headquarters and in the Regional offices.

An electronic version of the public docket is available through *http://www.regulations.gov* (see table below for Docket Identification numbers). Although not all Docket materials may be available electronically, you may still access any of the publicly available Docket materials through the Docket facilities identified below in section II D.

Site name	City/state	FDMS Docket ID No.
Iron King Mine—Humboldt Smelter	Dewey-Humboldt, AZ	EPA–HQ–SFUND–2008–0086.
Nelson Tunnel/Commodore Waste Rock	Creede, CO	EPA–HQ–SFUND–2008–0085.
Flash Cleaners	Pompano Beach, FL	EPA–HQ–SFUND–2008–0081.
Aberdeen Contaminated Ground Water	Aberdeen, NC	EPA–HQ–SFUND–2008–0082.
East Troy Contaminated Aquifer	Troy, OH	EPA–HQ–SFUND–2007–0690.
Old Esco Manufacturing	Greenville, TX	EPA–HQ–SFUND–2008–0084.

B. What Documents Are Available for Review at the Headquarters Docket?

The Headquarters Docket for this rule contains, for each site, the HRS score sheets, the Documentation Record describing the information used to compute the score, pertinent information regarding statutory requirements or EPA listing policies that affect the site, and a list of documents referenced in the Documentation Record. For sites that received comments during the comment period, the Headquarters Docket also contains a Support Document that includes EPA's responses to comments.

C. What Documents Are Available for Review at the Regional Dockets?

The Regional Dockets contain all the information in the Headquarters Docket, plus the actual reference documents containing the data principally relied upon by EPA in calculating or evaluating the HRS score for the sites located in their Region. These reference documents are available only in the Regional Dockets. For sites that received comments during the comment period, the Regional Docket also contains a Support Document that includes EPA's responses to comments.

D. How Do I Access the Documents?

You may view the documents, by appointment only, after the publication of this rule. The hours of operation for the Headquarters Docket are from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. Please contact the Regional Dockets for hours.

Following is the contact information for the EPA Headquarters: Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue; EPA West, Room 3340, Washington, DC 20004, 202/566–1744.

The contact information for the Regional Dockets is as follows:

Joan Berggren, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records and Information Center, Mailcode HSC, One Congress Street, Suite 1100, Boston, MA 02114–2023; 617/918–1417.

Dennis Munhall, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4343.

Dawn Shellenberger (ASRC), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3PM52, Philadelphia, PA 19103; 215/814–5364.

Debbie Jourdan, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW., 9th floor, Atlanta, GA 30303; 404/562–8862.

Janet Pfundheller, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Superfund Division SRC–7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/353–5821.

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Mailcode 6SF–RA, Dallas, TX 75202–2733; 214/665–7436.

Michelle Quick, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Kansas City, KS 66101; 913/551–7335.

Gwen Christiansen, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 1595 Wynkoop Street, Mailcode 8EPR–B, Denver, CO 80202–1129; 303/312–6463.

Dawn Richmond, Region 9 (AZ, CA, HI, NV, AS, GU), U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105; 415/972–3097.

Ken Marcy, Region 10 (AK, ID, OR, WA), U.S. EPA, 1200 6th Avenue, Mail Stop ECL–115, Seattle, WA 98101; 206/463–1349.

E. How May I Obtain a Current List of NPL Sites?

You may obtain a current list of NPL sites via the Internet at *http://www.epa.gov/superfund/* (look under the Superfund sites category) or by contacting the Superfund Docket (see contact information above).

III. Contents of This Final Rule

A. Additions to the NPL

This final rule adds the following six sites to the NPL, all to the General Superfund Section:

State	Site name	City/county
AZ	Iron King Mine—Humboldt Smelter	Dewey-Humboldt.
CO	Nelson Tunnel/Commodore Waste Rock	Creede.
FL	Flash Cleaners	Pompano Beach.
NC	Aberdeen Contaminated Ground Water	Aberdeen.
OH	East Troy Contaminated Aquifer	Troy.
TX	Old Esco Manufacturing	Greenville.

B. What Did EPA Do With the Public Comments It Received?

EPA reviewed all comments received on the sites in this rule and responded to all relevant comments.

Six sites are being finalized in this rule. Comments related to one site, East Troy Contaminated Aquifer (OH), are being addressed individually in a Support Document available concurrently with the publication of this final rule. Please refer to the docket for EPA's responses to comments for that site. One general comment, and comments submitted on the other five sites being finalized, are addressed below.

EPA received a late comment, stating that EPA's process for adding sites to the NPL does not meet notice-and-comment rulemaking requirements under the Administrative Procedure Act (APA), and urging that EPA provide additional information beyond that which it already does, in order to facilitate a dialogue with interested parties on why the site was chosen for addition to the NPL. In response, EPA's process for adding sites to the NPL complies with the APA. EPA agrees generally with the commenter that a dialogue with interested parties is useful to inform listing decisions, but believes there are many opportunities for such a dialogue throughout the Superfund cleanup process before listing a site on the NPL.

Typically for a prospective site (and in accordance with the long-standing procedures in the NCP), EPA conducts a preliminary assessment (PA), and documents its findings in a public report. Based on the PA, EPA may then conduct a more comprehensive site inspection (SI), the results of which are also documented in a public report. An SI typically involves gathering sampling data (by being physically at or near the site) and gathering additional assessment data by contacting the state and other parties, such as landowners at or near the site. These early efforts put interested parties on notice of EPA's interest in the site. When EPA proposes to list a site, EPA provides its detailed rationale in documents publicly available at EPA Headquarters in Washington, DC, in the Regional offices, and by electronic access at *http://www.regulations.gov.* If the site is affected by any particular CERCLA statutory requirements or EPA listing policies, site-specific discussions of those statutory requirements or listing policies are included as part of the docket materials for public review and comment. Commenters have the opportunity to raise any comments they may have on the proposed action, including raising any policy concerns regarding the propriety of using the Superfund process to address the site. Indeed, EPA often gets comments of this nature on its proposed sites, and responds to those comments before it makes any final decision to list a site on the NPL.

No comments were received on Flash Cleaners (FL) and Aberdeen Contaminated Groundwater (NC). EPA received three comments on the Old Esco Manufacturing site. To the extent they addressed the listing action, they favored it.

One comment was received for the Nelson Tunnel/Commodore Waste Rock (CO) site. That comment, from a community organization, supported listing and presented a preferred alternative treatment involving the collection and treatment of effluent before discharge to the Rio Grande. Additional cleanup suggestions were also made. In response, although final cleanup decisions rest with EPA, EPA will work with the community and State and take the suggestions by the commenter into account before any decision is made.

Three comments were received on the Iron King Mine-Humboldt Smelter site. One comment supported listing. A second comment asked two questions relevant to the listing, namely what specific properties were included in the site, and whether this included the commenter's property. In response, as described above, the site includes all areas where a hazardous substance has come to be located. EPA needs to do further study of the site before determining whether a specific property will be included. The third comment submitted on the site was from Kuhles Capital, LLC. The commenter was opposed to including any of its property in the listing, stating: (1) It believed that all prudent cleanup and reclamation (which it described as including removal of trash, grading of areas, and construction of berms and a storm water collection system) of its property had been completed; (2) if EPA believed additional work was needed, the company would be willing to voluntarily complete the work; and (3) including the property on the NPL site would be detrimental to both Kuhles Capital and the area economy. In support, Kuhles Capital included 26 pictures of cleanup work. In response, EPA is listing the release as described in the HRS scoring evaluation for the site. As mentioned just above in response to the second comment, EPA will refine the boundaries of the site after further investigation and obtaining additional information. Moreover, EPA's cleanup work must adhere to the requirements in the NCP. It is not clear whether the activities described by Kuhles Capital in its comment letter meet those standards, or whether they are protective of human health and the environment. Remedy selection, including evaluation of alternatives, occurs at a later stage of the cleanup process. EPA also notes that the act of listing does not assign liability. With respect to the offer to clean up contamination voluntarily, EPA will take the offer into consideration. EPA will work with all parties in an effort to ensure the cleanup process will not negatively impact the community.

All comments that were received by EPA are contained in the Headquarters Docket and are also listed in EPA's electronic public Docket and comment system at *http://www.regulations.gov*.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

1. What Is Executive Order 12866?

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

2. Is This Final Rule Subject to Executive Order 12866 Review?

No. The listing of sites on the NPL does not impose any obligations on any entities. The listing does not set standards or a regulatory regime and imposes no liability or costs. Any liability under CERCLA exists irrespective of whether a site is listed. It has been determined that this action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

1. What Is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9.

2. Does the Paperwork Reduction Act Apply to This Final Rule?

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

1. What Is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an 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 governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

2. How Has EPA Complied with the Regulatory Flexibility Act?

This rule listing sites on the NPL does not impose any obligations on any group, including small entities. This rule also does not establish standards or requirements that any small entity must meet, and imposes no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking. Thus, this rule does not impose any requirements on any small entities. For the foregoing reasons, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

1. What Is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule where a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small-government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

2. Does UMRA Apply to This Final Rule?

No, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or by the private sector in any one year. This rule will not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

E. Executive Order 13132: Federalism

What Is Executive Order 13132 and Is It Applicable to This Final Rule?

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation. This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

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

1. What Is Executive Order 13175?

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

2. Does Executive Order 13175 Apply to This Final Rule?

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and

responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this final rule.

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

1. What Is Executive Order 13045?

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

2. Does Executive Order 13045 Apply to This Final Rule?

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this section present a disproportionate risk to children.

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

Is This Rule Subject to Executive Order 13211?

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

1. What Is the National Technology Transfer and Advancement Act?

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

2. Does the National Technology Transfer and Advancement Act Apply to This Final Rule?

No. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Congressional Review Act

1. Has EPA Submitted This Rule to Congress and the General Accounting Office?

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

2. Could the Effective Date of This Final Rule Change?

Provisions of the Congressional Review Act (CRA) or section 305 of CERCLA may alter the effective date of this regulation.

Under the CRA, 5 U.S.C. 801(a), before a rule can take effect the federal agency promulgating the rule must submit a report to each House of the Congress and to the Comptroller General. This report must contain a copy of the rule, a concise general statement relating to the rule (including whether it is a major rule), a copy of the cost-benefit analysis of the rule (if any), the agency's actions relevant to provisions of the Regulatory Flexibility Act (affecting small businesses) and the Unfunded Mandates Reform Act of 1995 (describing unfunded federal requirements imposed on state and local governments and the private sector), and any other relevant information or requirements and any relevant Executive Orders.

EPA has submitted a report under the CRA for this rule. The rule will take effect, as provided by law, within 30 days of publication of this document, since it is not a major rule. Section 804(2) defines a major rule as any rule that the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) finds has resulted in or is likely to result in: An annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. NPL listing is not a major rule because, as explained above, the listing, itself, imposes no monetary costs on any person. It establishes no enforceable duties, does not establish that EPA necessarily will undertake remedial action, nor does it require any action by any party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Section 801(a)(3) provides for a delay in the effective date of major rules after this report is submitted.

3. What Could Cause a Change in the Effective Date of This Rule?

Under 5 U.S.C. 801(b)(1) a rule shall not take effect, or continue in effect, if Congress enacts (and the President signs) a joint resolution of disapproval, described under section 802.

Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha*, 462 U.S. 919, 103 S. Ct. 2764 (1983) and *Bd. of Regents of the University of Washington* v. *EPA*, 86 F.3d 1214, 1222 (D.C. Cir. 1996) cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

If action by Congress under either the CRA or CERCLA section 305 calls the effective date of this regulation into question, EPA will publish a document of clarification in the **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: August 27, 2008.

Susan Parker Bodine,

Assistant Administrator, Office of Solid Waste and Emergency Response.

■ 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

■ 2. Table 1 of Appendix B to part 300 is amended by adding the following sites in alphabetical order to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes [a]
*	*	*	*
AZ	Iron King Mine—Humboldt Smelter	Dewey-Humboldt.	
*	*	*	*
CO	Nelson Tunnel/Commodore Waste Rock	Creede.	
*	*	*	*
FL	Flash Cleaners	Pompano Beach.	
*	*	*	*
NC	Aberdeen Contaminated Ground Water	Aberdeen.	
*	*	*	*
OH	East Troy Contaminated Aquifer	Troy.	
*	*	*	*
TX	Old Esco Manufacturing	Greenville.	
*	*	*	*

[a] A = Based on issuance of health advisory by Agency for Toxic Substance and Disease Registry (HRS score need not be ≥ 28.50).
C = Sites on Construction Completion list.
S = State top priority (HRS score need not be ≥ 28.50)
P = Sites with partial deletion(s).

* * * * *

[FR Doc. E8–20390 Filed 9–2–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 15, 27, and 74

[WT Docket Nos. 08–166, 08–167; FCC 08–188]

Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698–806 MHz Band; Public Interest Spectrum Coalition, Petition for Rulemaking Regarding Low Power Auxiliary Stations, Including Wireless Microphones, and the Digital Television Transition

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission imposes a freeze on the filing of new license applications that seek to operate on any 700 MHz Band frequencies (698–806 MHz) after the end of the DTV transition, February 17, 2009 as well as on granting any request for equipment authorization of low power auxiliary station devices that would operate in any of the 700 MHz Band frequencies. The Commission also holds in abeyance, until the conclusion of this proceeding, any pending license applications and equipment authorization requests that involve operation of low power auxiliary devices on frequencies in the 700 MHz Band after the end of the DTV transition.

DATES: The effective date of the abeyance and the freezes is August 21, 2008.

FOR FURTHER INFORMATION CONTACT: Bill Stafford, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau at (202) 418–0563 or *Bill.Stafford@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's interim rules noted in the Notice of Proposed Rulemaking and Order in WT Docket Nos. 08–166 and 08–167, FCC 08–188, adopted August 15, 2008, and released on August 21, 2008. This summary should be read with its companion document, the notice of proposed rulemaking summary published elsewhere in this issue of the **Federal Register**. The full text of the Notice of Proposed Rulemaking and Order 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 numbers, WT Docket No. 08–166 and WT Docket No. 08–167. Additionally, the complete item is available on the Federal Communications Commission's Web site at *http://www.fcc.gov.*

Synopsis of the Order Section of the Notice of Proposed Rulemaking and Order Introduction

The Digital Television Transition and Public Safety Act of 2005 (DTV Act) set a firm deadline for the end of the digital television (DTV) transition of February 17, 2009, at which time the spectrum in the 698–806 MHz Band (700 MHz Band), currently occupied by television broadcasters in TV Channels 52–69, will be fully available for public safety as well as commercial wireless services. As the Commission has recognized, it is incumbent on the Commission to take all steps necessary to make this spectrum effectively available both to public safety and commercial licensees at the end of the DTV transition.

1. In the Order below, the Commission imposes a freeze, effective August 21, 2008, on the filing of new license applications that seek to operate on any 700 MHz Band frequencies (698–806 MHz) after the end of the DTV transition, February 17, 2009. In addition, the Commission imposes a freeze, effective August 21, 2008, on granting any request for equipment authorization of low power auxiliary station devices that would operate in any of the 700 MHz Band frequencies. The Commission also holds in abeyance, beginning August 21, 2008 until the conclusion of this proceeding, any pending license applications and equipment authorization requests that involve operation of low power auxiliary devices on frequencies in the 700 MHz Band after the end of the DTV transition.

Order

2. In light of the Commission's tentative conclusion not to permit the operation of low power auxiliary stations on 700 MHz Band frequencies (698–806 MHz) following the end of the DTV transition, the Commission also finds that continuing to accept new license applications for low power auxiliary station licenses that involve the operation of such stations on this spectrum after February 17, 2009 would impair the objectives that the Commission is proposing in this proceeding. In addition, the Commission imposes a freeze on granting any request for equipment authorizations of low power auxiliary station devices that would operate in any of the 700 MHz Band frequencies. Accordingly, the Commission hereby suspends acceptance of license applications and equipment authorizations for low power auxiliary stations that seek to operate on 700 MHz Band frequencies after February 17, 2009. This suspension is effective immediately and until further notice and applies to applications received on or after August 21, 2008. Any applications received on or after this date will be returned as unacceptable for filing. The Commission takes this action to permit orderly and effective resolution of issues in this proceeding.

3. In addition, the Commission will not process such pending license applications and equipment authorization requests if they would involve operation in the 700 MHz Band after the end of the DTV transition. Pending applications and equipment authorization requests will be held in abeyance until the conclusion of this proceeding, whereupon the Commission will determine, in accordance with such new rules as are adopted, whether to process or return any such pending applications and equipment authorization requests. The Commission notes that entities with pending applications and equipment authorization requests to operate in the spectrum that would include the 700 MHz Band are free to modify their applications and requests to exclude operation in this band, and these applications and requests could then proceed with being processed.

Procedural Matters

1. Ex Parte Requirements

This proceeding has been designated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules.[1] 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.[2] More than a one- or two-sentence description of the views and arguments presented is generally required.[3]

2. Initial Paperwork Reduction Act of 1995 Analysis

4. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

3. Initial Regulatory Flexibility Analysis

5. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[4] the Federal Communications Commission (Commission) has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules considered in the Notice of Proposed Rulemaking and Order (*NPRM*), WT Docket No. 08–166 and WT Docket No. 08–167.[5] (This IRFA can also be found in its entirety in the companion summary document noted previously in this supplementary information section.) Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided on page one of the *NPRM.* The Commission will send a copy of the *NPRM,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[6] In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.[7]

Ordering Clauses

6. Accordingly, *it is ordered,* pursuant to sections 1, 2, 4(i), 4(j), 301, 302, 303, 304, 307, 308, 309, 316, 332, 336, and 337 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 301, 302a, 303, 304, 307, 308, 309, 316, 332, 336, and 337 that this *notice of proposed rulemaking and order* in WT Docket No. 08–166 and WT Docket No. 08–167 *is hereby adopted.*

7. *It is further ordered* that, pursuant to 5 U.S.C. 553(b)(A), (B), (d), and sections 4(i), 4(j) and 303(r) of the Communications Act, as amended, 47 U.S.C. 154(i), 154(j), and 303(r), the acceptance of applications for low power auxiliary stations that seek to operate on 698–806 MHz after February 17, 2009, *is suspended,* effective August 21, 2008.

8. *It is further ordered* that, pursuant to 5 U.S.C. 553(b)(A), (B), (d), and

[1] *See* 47 CFR 1.1200(a), 1.1206.

[2] *See* Commission Emphasizes the Public's Responsibilities in Permit-But-Disclose Proceedings, *Public Notice,* 15 FCC Rcd 19945 (2000).

[3] *See* 47 CFR 1.1206(b)(2). Other rules pertaining to oral and written presentations are also set forth in section 1.1206(b). *See* 47 CFR 1.1206(b).

[4] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. 104–121, Title II, 110 Stat. 857 (1996).

[5] Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698–806 MHz Band, WT Docket No. 08–166, Public Interest Spectrum Coalition, Petition for Rulemaking Regarding Low Power Auxiliary Stations, Including Wireless Microphones, and the Digital Television Transition, WT Docket No. 08–167.

[6] *See* 5 U.S.C. 603(a).

[7] *Id.*

sections 4(i), 4(j) and 303(r) of the Communications Act, as amended, 47 U.S.C. 154(i), 154(j), and 303(r), pending applications for low power auxiliary stations that seek to operate on frequencies 698–806 MHz after February 17, 2009, *will not be processed,* and will be held in abeyance until the conclusion of this proceeding initiated by this *notice of proposed rulemaking and order.*

9. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *notice of proposed rulemaking and order,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. E8–20501 Filed 9–2–08; 8:45 am]

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Proposed Rules

Federal Register
Vol. 73, No. 171
Wednesday, September 3, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

RIN 3150–AI31

[NRC–2008–0458]

Criminal Penalties; Unauthorized Introduction of Weapons

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to authorize the imposition of Federal criminal penalties on those who, without authorization, introduce weapons or explosives into specified classes of facilities and installations subject to the regulatory authority of the NRC. This action is necessary to implement section 229, ''Trespass on Commission Installations,'' of the Atomic Energy Act of 1954, as amended.

DATES: Submit comments on the proposed rule October 20, 2008. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include the number RIN3150–AI31 in the subject line of your comments. Comments on this rulemaking submitted in writing or in electronic form will be made available to the public in their entirety on the Federal Government's rulemaking Web site, *http://www.regulations.gov.* Personal information, such as name, address, telephone, e-mail address, etc., will not be removed from your submission.

E-mail comments to: Comments may be submitted via the Federal eRulemaking Portal *http://www.regulations.gov;* search Docket ID NRC–2008–0458.

Mail Comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

Hand-deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays. (Telephone 301–415–1101)

Publicly available documents related to this rulemaking, including all public comments received, may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. For more information, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *PDR.Resource@nrc.gov.*

Documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm.html.* From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are any problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–415–4209, 301–415–4737, or by e-mail to *PDR.Resource@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: James E. Adler, Office of the General Counsel, telephone 301–415–1656, e-mail: *james.adler@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of the Proposed Rule
III. Plain Language
IV. Voluntary Consensus Standard
V. Finding of No Significant Environmental Impact: Environmental Assessment
VI. Paperwork Reduction Act Statement
VII. Regulatory Analysis
VIII. Regulatory Flexibility Certification
IX. Backfit Analysis
X. Agreement State Compatibility

I. Background

Section 654 of the Energy Policy Act of 2005, Unauthorized Introduction of Dangerous Weapons, amended section 229 of the Atomic Energy Act to authorize the NRC to issue regulations that make it a Federal crime to bring, without authorization, weapons or explosives into facilities designated by the Commission. This proposed rule would implement that legislative provision.

In 1956, Congress added section 229 to the Atomic Energy Act. That section made it a crime to bring weapons or explosives, without authorization, into facilities owned by the Atomic Energy Commission. With the enactment of the Energy Reorganization Act in 1974, this provision covered facilities now owned or occupied by the Department of Energy as well as the buildings occupied by the NRC. Section 229 did not extend to facilities regulated by the NRC. Over the years, there were incidents where individuals were successful in bringing weapons into NRC-regulated facilities without authorization. Fortunately, the individuals were not terrorists or others with malevolent intent and no damage was done. In such circumstances, the Commission had the ability to take action against its licensee for violation of security requirements, but could not refer the matter to the Department of Justice for criminal prosecution of the individual; any criminal sanctions had to be sought by the State under State law. Beginning in the late 1980s, the Commission submitted legislative proposals to Congress requesting that Congress enact legislation that would make it a Federal crime to bring weapons or explosives, without authorization, into NRC-designated facilities.

Congress enacted the requested legislation in section 654 of the Energy Policy Act of 2005, amending section 229 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2278a.) (the Atomic Energy Act). This section authorizes the Commission to:

> Issue regulations relating to the entry upon or carrying, transporting, or otherwise introducing or causing to be introduced any dangerous weapon, explosive, or other dangerous instrument or material likely to produce substantial injury or damage to person or property, into or upon any facility, installation, or real property subject to the jurisdiction, administration, in the custody of the Commission, or subject to the licensing authority of the Commission or certification by the Commission under this Act or any other Act.

Section 229 also requires that ''every such regulation of the Commission shall be posted conspicuously at the location involved.''

II. Discussion

The NRC is proposing to amend 10 CFR 73.81, Criminal penalties and to add 10 CFR 73.75, Posting to implement section 654 of the Energy Policy Act of 2005. Under the proposed regulations, the unauthorized willful introduction of any dangerous weapon, explosive or any other dangerous instrument or material likely to produce substantial injury or damage to persons or property upon the facilities or installations subject to sections 236a.(1) or (4) of the Atomic Energy Act would be subject to the criminal penalties set forth in section 229 of the Atomic Energy Act. The Commission here is primarily concerned with dangers posed by the unauthorized introduction of weapons or explosives when nuclear material and radioactive material are present. By listing these facilities in section 236 of the Atomic Energy Act, Congress has recognized the potential danger that could result from sabotage to them; consequently, the NRC believes it prudent to also make the unauthorized introduction of weapons or explosives into or upon these facilities a Federal crime. The covered facilities include: (1) Production and utilization facilities; and (2) uranium enrichment, uranium conversion and fuel fabrication facilities. The proposed rule also covers some of the facilities listed in section 236a.(2). Specifically, this proposed rule would apply to high-level waste storage and disposal facilities and independent spent fuel storage installations. The remaining waste facilities and installations listed in section 236a.(2) that are subject to Agreement State jurisdiction may be covered in a future rulemaking. For other classes of licensees, the unauthorized introduction of weapons or explosives would continue to be governed, absent other Federal legislation, by State law.

The NRC also chose the facilities listed in § 73.81(c)(1) because the unauthorized introduction of a weapon or explosive into these facilities poses the greatest health and safety risk and because the NRC already pervasively regulates these facilities. Other facilities—such as hospitals—that contain radioactive materials are not as extensively regulated by the NRC. In order to apply § 73.81 to these other facilities, the NRC would need to interact with Agreement States and other State and federal regulators to further assess the need for application of § 73.81 to such classes of facilities and to determine the proper placement of the required notices and the best way to implement this regulation. The NRC welcomes public comments on whether the NRC should expand this regulation to cover hospitals and other classes of facilities licensed to possess radioactive materials that are in the National Source Tracking System.

Whoever willfully introduces, without authorization, weapons or explosives into or upon any installation or facility listed in § 73.81(c)(1) that is enclosed by a fence, wall, floor, roof, or other barrier would be guilty of a misdemeanor, and upon conviction, could be punished by a fine not to exceed $5,000, or imprisonment for not more than one year, or both, as set forth in section 229c. of the Atomic Energy Act. Whoever willfully introduces, without authorization, weapons or explosives into or upon any other installation or facility listed in § 73.81(c)(1) would be, upon conviction, punishable by a fine of not more than $1,000, as set forth in section 229b. of the Atomic Energy Act. This proposed rule does not interfere with State prosecution of these crimes under State law, but it does allow the Federal Bureau of Investigation to investigate and the Department of Justice to prosecute in addition to, or instead of, the State Government.

At this time, the NRC does not propose including the following facilities or materials even though they are listed in section 236 of the Atomic Energy Act:

- Subsection a.(3) covering any nuclear fuel for a utilization facility licensed under this Act, or any spent fuel from such a facility. Section 229 of the Atomic Energy Act specifically applies to ''facilities and installations,'' while this subsection applies to ''nuclear fuel'' and ''spent nuclear fuel.'' Fuel is neither a facility nor installation; therefore, section 229, by its terms, is not applicable to this subsection.
- Subsection a.(5) covering any ''production, utilization, waste storage, waste treatment, waste disposal, uranium enrichment, uranium conversion, or nuclear fuel fabrication facility'' during construction of the facility, if the destruction or damage caused or attempted to be caused could adversely affect public health and safety during operation of the facility. In this proposed rule, the Commission is primarily concerned with dangers posed by the unauthorized introduction of weapons or explosives into facilities when nuclear material is present. Therefore, the proposed § 73.81(c) would apply only to those facilities designated in § 73.81(c)(1) upon the receipt of nuclear material. However, if an unauthorized introduction of a weapon or explosive results in sabotage covered by section 236 before the receipt of nuclear material, this would already constitute a Federal crime.
- Subsection a.(6) covering any ''primary or backup facility from which a radiological emergency preparedness alert or warning system is activated.'' These facilities do not contain nuclear material or contain the controls needed to operate a facility.
- Subsection a.(7) pertaining to other materials or property that the Commission designates by order or regulation. The Commission proposes excluding this section because the rulemaking implementing this subsection of section 236 has not commenced. The Commission may revisit this decision after the rulemaking implementing the Energy Policy Act of 2005 revisions to section 236 is complete.

This proposed regulation would not impose any burden on States. The only burden the proposed regulation would impose on licensees is the statutorily-mandated requirement that signs containing the quoted text in proposed § 73.75 be posted conspicuously at each of the listed facilities. The NRC proposes that these signs be posted at all points of entry to the protected area, or if the facility or installation does not have a protected area, at the personnel and vehicle entrances to each building that contains nuclear material or radioactive material. The signs may include other prohibitions already posted at the point of entry. The unauthorized introduction of weapons or explosives within the area marked by the signs would constitute a Federal crime. In other words, the introduction of weapons or explosives, without authorization, into or upon the protected area or if no protected area into or upon a building containing nuclear material would be a Federal crime. For purposes of this proposed section, ''without authorization'' means not authorized as part of one's official duties to carry weapons or explosives. Under this proposed definition, the introduction of weapons by security guards, peace officers or military personnel into the protected area or a building where the sign is posted as part of their official duties would be ''authorized'' and these individuals would not be subject to criminal sanctions.

The terms ''dangerous weapons,'' ''dangerous instrument or material,'' and ''explosives'' are not defined in the statute that these proposed regulations would implement. There is no consensus definition in state or federal statutes or judicial decisions for these terms. The NRC is soliciting comments on whether the NRC should define these

terms in the final rule or in a regulatory guidance document, and if they are defined, what the definitions should be.

The NRC recognizes that by placing the signs at the entrance to the protected area or if no protected area at the entrance to buildings containing nuclear material or radioactive material means that it would not be a Federal crime (under this proposed regulation) to merely stand beyond the area where the sign is posted with an unauthorized weapon or explosive. However, if anyone attacks the protected area or building where the sign is posted, he or she would be in violation of this proposed regulation because the firing of a bullet, explosive or other projectile into or upon the protected area or building where the sign is posted would constitute an unauthorized introduction of a dangerous instrument.

The signs should be easily readable day and night by both pedestrian and vehicular traffic. The NRC proposes a 90-day implementation period for this requirement to allow licensees enough time to acquire the appropriate signs. The NRC welcomes any comments on the sufficiency of this implementation period, on the feasibility of adding this notice at each entrance to the protected area or if no protected area at every entrance to buildings containing nuclear material, and on whether there is a more effective place to post the signs.

Further, the NRC is proposing that this be a performance-based regulation that states the signs should be ''easily readable day and night.'' The NRC is soliciting comments on whether the regulation should be written more specifically; for example, whether the regulation should specify a certain font size and color as well as lighting requirements or incorporate a consensus technical standard such as the Americans with Disabilities Act signage standard.

This proposed rule should not require any changes to licensee security procedures. Under § 73.71(b)(1) and paragraph I(d) of appendix G to part 73, licensees are required to report within one hour, followed by a written report within 60 days, ''the actual or attempted introduction of contraband into a protected area, material access area, vital area, or transport.'' For purposes of this proposed rule, weapons, explosives or other dangerous instruments that are introduced without authorization would be ''contraband.''

III. Plain Language

The Presidential memorandum dated June 1, 1998, entitled ''Plain Language in Government Writing'' directed that the Government's writing be in plain language. This memorandum was published on June 10, 1998 (63 FR 31883). The NRC requests comments on the proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the **ADDRESSES** caption of the preamble.

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this proposed rule, the NRC is proposing criminal penalties for the unauthorized introduction of weapons or explosives into or upon certain facilities and installations subject to the regulatory authority of the NRC. This action does not constitute the establishment of a standard that contains generally applicable requirements.

V. Finding of No Significant Environmental Impact: Environmental Assessment

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The basis for this determination is as follows:

The Need for the Proposed Action

This proposed action is needed to implement section 229 of the Atomic Energy Act. In section 654 of the Energy Policy Act of 2005, Congress amended section 229 of the Atomic Energy Act, authorizing the NRC to issue regulations making it a Federal crime to, without authorization, introduce weapons or explosives into specified classes of facilities and installations subject to the regulatory authority of the NRC. Section 229 was also amended to require that each such regulation be posted conspicuously at the location involved.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed rule and concludes that it will not cause any significant environmental impact. The only action required by the proposed rule is the requirement in § 73.75 that licensees place a notice at each entrance to the protected area or if the facility or installation does not have a protected area at each entrance to a building that contains nuclear material or radioactive material. Licensees already post notices at the entrances to facilities, and this proposed rule allows licensees to combine the notice required in § 73.75 with these other notices. Therefore, the NRC has concluded that there will be little to no environmental impact of creating and posting an additional notice. Accordingly, the NRC concludes that there will be no significant environmental impacts associated with this proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered not promulgating this rule (the ''no-action'' alternative). This would result in leaving unfulfilled the Congressional authorization the NRC had sought. Moreover, because implementation of the proposed rule would not result in environmental impacts, the no-action alternative would not reduce the environmental impacts.

Accordingly, the Commission determined in this environmental assessment that there will be no significant offsite impact to the public from this action. However, the Commission is soliciting public comments on any aspect of the environmental assessment. These comments may be submitted to the NRC as indicated under the **ADDRESSES** heading.

VI. Paperwork Reduction Act Statement

This proposed rule does not contain information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The posting requirements contained in this proposed rule are not included in the definition of information collection because the public disclosure information was originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

VII. Regulatory Analysis

A regulatory analysis has not been prepared for this regulation. Congress

authorized the NRC to implement by regulation section 654 of the Energy Policy Act of 2005, which establishes as a Federal crime the unauthorized introduction of weapons or explosives into NRC-designated facilities. The Atomic Energy Act requires that signs be conspicuously posted warning facility entrants of the criminal prohibition. The only costs associated with implementing the proposed rule are the costs to procure, post and maintain these signs. The Commission has considered the economic implications of this proposed rule, and has determined that there are limited costs associated with implementation.

VIII. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this proposed rule, if promulgated, would not have a significant economic impact upon a substantial number of small entities.

IX. Backfit Analysis

The NRC has determined that a backfit rule, 10 CFR 50.109, 70.76, 72.62, 76.76, does not apply to this proposed rule and that a backfit analysis is not required. The backfit analysis is not required because the only actions required by the proposed rule would be the procuring and posting of signs. The posting of such signs is required by section 229a.(2) of the AEA and does not involve the exercise of agency discretion and, in any event, does not require the modification of or additions to systems, structures, components, or design of a facility or the design approval or manufacturing license for a facility, or the procedures or organization required to design, construct, or operate a facility.

X. Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of Title 10 of the *Code of Federal Regulations.* Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws but does not confer regulatory authority on the State.

List of Subjects in 10 CFR Part 73

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552, the NRC is proposing to adopt the following amendments to 10 CFR part 73.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 53, 161, 149, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2169, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Public Law 109–58, 119 Stat. 594 (2005).

Section 73.1 also issued under secs. 135, 141, Public Law 97–425, 96 Stat. 2232, 2241 (42 U.S.C., 10155, 10161). Section 73.37(f) also issued under sec. 301, Public Law 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Public Law 99–399, 100 Stat. 876 (42 U.S.C. 2169).

2. Section 73.75 is added to read as follows:

§ 73.75 Posting.

Licensees or certificate holders operating facilities subject to the requirements of § 73.81(c) shall conspicuously post notices at every vehicle and pedestrian entrance to the protected area or, if a facility or installation does not have a protected area, at the personnel and vehicle entrances to each building containing nuclear material or radioactive material. Such notices must state: ''The willful unauthorized introduction of any dangerous weapon, explosive, or other dangerous instrument or material likely to produce substantial injury or damage to persons or property into or upon these premises is a Federal crime. (42 U.S.C. 2278a.)'' Every such notice must be easily readable day and night by both pedestrian and vehicular traffic entering the facility or installation. These notices may be combined with other notices.

3. In § 73.81, paragraph (b) is revised, and paragraph (c) is added, to read as follows:

§ 73.81 Criminal penalties.

* * * * *

(b) The regulations in part 73 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 73.1, 73.2, 73.3, 73.4, 73.5, 73.6, 73.8, 73.25, 73.45, 73.75, 73.80, and 73.81.

(c)(1) Any individual who, without authorization, willfully carries, transports, or otherwise introduces or causes to be introduced any dangerous weapon, explosive, or other dangerous instrument or material likely to produce substantial injury or damage to persons or property into or upon any of the following facilities or installations licensed or certified by the NRC shall be subject to the criminal penalties set forth in section 229 of the Act:

(i) Production or utilization facilities;

(ii) High-level waste storage or disposal facilities and independent spent fuel storage installations; or

(iii) Uranium enrichment, uranium conversion, or nuclear fuel fabrication facilities.

(2) Licensees or certificate holders operating facilities described in paragraph (c)(1) of this section must follow the posting requirements in § 73.75.

(3) As used in this section:

(i) ''Without authorization'' means not authorized as part of one's official duties to carry weapons or explosives;

(ii) ''Introduce'' means to transport or discharge a weapon, explosive or other dangerous instrument past the notice posted pursuant to § 73.75.

(4) For all facilities or installations described in paragraph (c)(1) of this section that do not possess nuclear material or radioactive material as of [insert effective date of final rule], this provision shall take effect upon receipt of nuclear material at the applicable facility or installation.

Dated at Rockville, Maryland, this 25th day of August 2008.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E8–20365 Filed 9–2–08; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25001; Directorate Identifier 2006–NM–079–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, –700C, –800, –900 and –900ER Series 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 proposed airworthiness directive (AD) for certain Boeing Model 737–600, –700, –700C, –800 and –900 series airplanes. The original NPRM would have required replacing the aero/fire seals of the blocker doors on the thrust reverser torque boxes on the engines with new, improved aero/fire seals. The original NPRM resulted from a report that the top three inches of the aero/fire seals of the blocker doors on the thrust reverser torque boxes are not fireproof. This action revises the original NPRM by adding airplanes to the applicability statement and requiring a one-time inspection to determine the part numbers of the aero/fire seals. We are proposing this supplemental NPRM to prevent a fire in the fan compartment (a fire zone) from migrating through the seal to a flammable fluid in the thrust reverser actuator compartment (a flammable fluid leakage zone), which could result in an uncontrolled fire.

DATES: We must receive comments on this supplemental NPRM by September 29, 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 proposed 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: Samuel Spitzer, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 917–6510; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2006–25001; Directorate Identifier 2006–NM–079–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 737–600, –700, –700C, –800 and –900 series airplanes. The original NPRM was published in the **Federal Register** on June 13, 2006 (71 FR 34025). The original NPRM proposed to require replacing the aero/fire seals of the blocker doors on the thrust reverser torque boxes on the engines with new, improved aero/fire seals.

Actions Since Original NPRM Was Issued

Since we issued the original NPRM, we have received information on the rotability of the affected aero/fire seals. Also, Model 737–900ER series airplanes have been added to the U.S. type certificate data sheet and could be affected by the rotability of the seals.

Comments

We have considered the following comments on the original NPRM.

Support for the Original NPRM

Boeing concurs with the contents of the original NPRM.

Request To Revise the Applicability Statement To Address Rotable Parts

AirTran Airways requests that we revise the applicability statement of the original NPRM to apply to the part number/serial number of the affected thrust reverser assembly instead of the serial number of airplanes. AirTran is concerned that the proposed applicability does not address the possibility that an affected thrust reverser assembly might be installed on an airplane not addressed in that applicability statement. AirTran states that the thrust reverser assembly is a rotable component, which can be removed from an airplane affected by this proposed AD and installed on an airplane not affected by this proposed AD. AirTran also notes that the thrust reverser assemblies have serialized numbers and are tracked by most airlines.

We agree that it is possible to rotate the affected component onto another Model 737–600, –700, –700C, –800, –900, or –900ER series airplane that is not affected by the applicability proposed in the original NPRM. We have revised the applicability statement in this supplemental NPRM to apply to all Model 737–600, –700, –700C, –800, –900 and –900ER series airplanes. We have also added a new paragraph (f) to this supplemental NPRM to require a record check or inspection to determine the part number of the installed assembly. If an affected part number is installed, or the part number cannot be confirmed, then operators would be required to replace the assemblies. We have coordinated this issue with Boeing.

Request To Address Spare Parts

AirTran notes that the original NPRM does not address thrust reverser assemblies that were purchased as spare parts. AirTran states that the original NPRM does not require any modifications to any thrust reverser

assembly not currently installed on an airplane.

We infer that AirTran is concerned about the possibility that an affected and unmodified spare thrust reverser assembly may be installed on an airplane.We do not agree that revising the supplemental NPRM to address spare parts is necessary. We have confirmation from Boeing that all affected spare assemblies have been purged from the parts supply system. In addition, no affected/unsafe part is allowed to be installed on an airplane after the compliance time of an AD has passed. We have revised this supplemental NPRM to address the rotability concern expressed in the previous comment. For these reasons, we consider revising the AD to address spare parts unnecessary. We have not changed the supplemental NPRM in this regard.

Request To Incorporate by Reference During NPRM Process

The Modification and Replacement Parts Association (MARPA) requests that the applicable service information be incorporated by reference in the NPRM phase of rulemaking and posted on the Federal Docket Management System (FDMS) for public access. MARPA states that since the service information has additional information that is not public, the proposed rule is not enforceable.

We do not agree that documents should be incorporated by reference during the NPRM phase of rulemaking. The Office of the Federal Register requires that documents that are necessary to accomplish the requirements of the AD be incorporated by reference during the final rule phase of rulemaking. This supplementary NPRM is not a final rule and does not incorporate the relevant service information by reference. Further, we point out that while documents that are incorporated by reference do become public information, they do not lose their copyright protection. For that reason, we advise the public to contact the manufacturer to obtain copies of the referenced service information.

In regard to the commenter's request to post service bulletins on the Department of Transportation's FDMS, we are currently in the process of reviewing issues surrounding the posting of service information on-line as part of an AD docket. Once we have thoroughly examined all aspects of this issue and have made a final determination, we will consider whether our current practice needs to be revised. No change to the supplemental NPRM is necessary in this regard.

Request To Address Defective Parts Manufacturer Approval (PMA) Parts

The same commenter also requests that the Transport Airplane Directorate (TAD) develop a policy to address possible defective or replacement PMA alternative parts, regardless of the manufacturing source (original equipment manufacturer (OEM), PMA, or repair station), so that all defective PMA parts are also subject to the proposed AD and are removed from the parts stream.

The FAA recognizes the need for standardization of this issue and is currently in the process of reviewing issues that address the use of PMAs in ADs at the national level. However, the Transport Airplane Directorate considers that to delay this particular AD action would be inappropriate, since we have determined that an unsafe condition exists and that replacement of certain parts must be accomplished to ensure continued safety. Therefore, no change has been made to the supplemental NPRM in this regard.

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

There are about 2,442 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	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection to determine part number (new proposed action)	1	$80	$0	$80	803	$64,240

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 adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2006–25001; Directorate Identifier 2006–NM–079–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by September 29, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 737–600, –700, –700C, –800, –900 and –900ER series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from a report that the top three inches of the aero/fire seals of the blocker doors on the thrust reverser torque boxes are not fireproof. We are issuing this AD to prevent a fire in the fan compartment (a fire zone) from migrating through the seal to a flammable fluid in the thrust reverser actuator compartment (a flammable fluid leakage zone), which could result in an uncontrolled fire.

Compliance

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

Inspection To Determine Part Number (P/N)

(f) Within 60 months or 8,200 flight cycles after the effective date of this AD, whichever occurs first: Perform a one-time detailed inspection to determine the color of the aero/fire seals of the blocker doors on the thrust reverser torque boxes on the engines. For any aero/fire seal having a completely gray color (which is the color of seals with P/N 315A2245–1 or 315A2245–2), with no red at the upper end of the seal, do the actions specified in paragraph (g) of this AD. For any aero/fire seal having a red color at the upper end of the seal (which indicates a different part number), no further action is required by this AD. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the correct aero/fire seals (P/Ns 315A2245–7 or –8) can be conclusively determined to be installed from that review.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

Replace the Aero/Fire Seals

(g) For any aero/fire seal identified during the inspection/records check in paragraph (f) of this AD as having an affected P/N: Within 60 months or 8,200 flight cycles after the effective date of this AD, whichever occurs first, replace the aero/fire seals of the blocker doors on the thrust reverser torque boxes on the engines with new, improved aero/fire seals in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–78–1074, Revision 1, dated September 15, 2005.

Credit for Actions Done Using Previous Service Information

(h) Replacements done before the effective date of this AD in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–78–1074, dated April 7, 2005, are acceptable for compliance with the requirements of paragraph (g) of this AD.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Seattle Aircraft Certification Office, FAA, ATTN: Samuel Spitzer, Aerospace Engineer, Propulsion Branch, ANM–140S, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6510; 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 25, 2008.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–20341 Filed 9–2–08; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Exemption From Classification as Banned Hazardous Substance; Proposed Exemption for Boston Billow Nursing Pillow and Substantially Similar Nursing Pillows

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing to exempt the Boston Billow Nursing Pillow and substantially similar nursing pillows from the Commission's regulations banning infant cushions/pillows set forth in the Commission's regulations at 16 CFR 1500.18(a)(16)(i).

DATES: Written comments in response to this notice must be received by October 3, 2008.

ADDRESSES: Comments should be submitted to the Office of the Secretary by e-mail at *cpsc-os@cpsc.gov*, or mailed or delivered, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814. Comments may also be filed by facsimile to (301) 504–0127. Comments should be captioned ''Infant Cushions/Pillows NPR.''

FOR FURTHER INFORMATION CONTACT: Suad Wanna-Nakamura, Directorate for Health Sciences, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; telephone (301) 504–7252; e-mail *snakamura@cpsc.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

Between 1985 and 1992, there were 35 infant deaths associated with the use of infant cushions/pillows (also known, among other names, as ''baby beanbag pillows'' and ''beanbag cushions''). In almost all of the cases where the infant's position could be determined, the infant was in a prone, face down, position. 55 FR 42202. The Commission initiated a rulemaking proceeding to determine whether a ban was necessary to address an unreasonable risk of injury and death associated with these types of infant cushions/pillows. Due to the number of infant deaths associated with these products, the Commission proposed a rule to ban infant cushions/pillows with certain characteristics. 56 FR 32352. On June 23, 1992, the Commission issued a rule codified at 16 CFR 1500.18(a)(16)(i), banning infant cushions/pillows that: (1) Have a flexible fabric covering; (2) are loosely

filled with a granular material, including but not limited to, polystyrene beads or pellets; (3) are easily flattened; (4) are capable of conforming to the body or face of an infant; and (5) are intended or promoted for use by children under one year of age. 57 FR 27912.

On July 17, 2005, Boston Billows, Inc. (Boston Billows) submitted a petition requesting an amendment to 16 CFR 1500.18(a)(16)(i)(A)–(E) to allow an exception to the ban. The petitioner is the manufacturer of the Boston Billow Nursing Pillow, a granularly filled, C-shaped pillow intended for use by mothers when breastfeeding.

B. The ANPR

The Commission issued an advance notice of proposed rulemaking (ANPR) on September 27, 2006, to assess whether a rulemaking was necessary to address any unreasonable risk of injury or death which may be associated with infant cushions/pillows. 71 FR 56418. In addition to the Boston Billow Nursing Pillow, which met the criteria of the ban, there appeared to be a proliferation of other infant cushions/pillows or pillow-like products in the marketplace, including nursing pillows which met some, but not all, of the criteria set forth in the ban. The potential regulatory alternatives noted included whether to: (1) Amend the regulation to allow an exemption to the ban; (2) delete, revise or add criteria to the ban; (3) leave the existing regulation unchanged; or (4) repeal the existing regulation. Nine written comments were received in response to the ANPR in support of Boston Billows' request for exemption from the ban. After review of the comments, incident reports and other available information, the Commission determined there was insufficient data or product information on infant cushions or pillow-like products, other than the Boston Billow Nursing Pillow, to proceed with further rulemaking on those products at this time. Accordingly, a notice terminating the rulemaking on infant cushions/pillows or pillow-like products intended for use by infants, other than with respect to the Boston Billow Nursing Pillow and substantially similar nursing pillows, appears elsewhere in this **Federal Register**.

C. The Proposed Exemption

The ban on infant cushions/pillows was promulgated pursuant to the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1261 *et seq.* Section 2(f)(1)(D) of the FHSA defines ''hazardous substance'' to include any toy or other article intended for use by children which the Commission determines, by regulation, presents an electrical, mechanical, or thermal hazard. 15 U.S.C. 1261(f)(1)(D). An article may present a mechanical hazard if its design or manufacture presents an unreasonable risk of personal injury or illness during normal use or when subjected to reasonably foreseeable damage or abuse. 15 U.S.C. 1261(s). To grant Boston Billows' request for an exemption, the Commission must find that the Boston Billow Nursing Pillow does not present an unreasonable risk of injury from the mechanical hazard that the banning rule was intended to prevent.

Commission staff reviewed the incident data on infant cushions and nursing pillows for the period of January 1992 through June 2007. Staff also reviewed additional data from July 2007 through May 2008. Since 1992, there have been no reported deaths associated with infant cushions meeting the definition of a banned infant cushion/pillow. However, staff identified 531 infant deaths associated with pillows and cushions that did not meet the definition of a banned infant cushion/pillow. (From January 1992 through June 2007, there were 484 deaths reported and from July 2007 through May 2008, there were an additional 47 deaths reported.) The majority of these incidents involved adult pillows and sofa cushions which possess many of the same characteristics as the banned bean bag cushions. These products have soft covers and flexible filling material that can conform to an infant's face. A variety of pillow types and cushions with different types of filling including foam, feathers, and polyester were involved in the incidents. In this data set, two infant deaths have been associated with a polyester filled nursing pillow (which does not meet the definition of a banned infant cushion/pillow). One incident occurred in 2001 when a four-month-old infant was placed to sleep on his stomach in a playpen with his head resting on the nursing pillow. The second incident occurred in 2007, when a 46-day-old infant was placed in a prone position inside a crib with his head propped on the nursing pillow.

CPSC staff was also made aware of three additional deaths in 2006 where a nursing pillow was in the infant's sleep environment. The pillows involved with these deaths were polyester filled crescent-shaped nursing pillows not subject to the CPSC's infant cushion ban. The cause of these deaths in all cases was initially determined by the medical examiner to be Sudden Infant Death Syndrome (SIDS)/undetermined. In 2008, the New York Westchester County Child Fatality Review Team examined the case files for these deaths. Further investigation of these incidents, including review of documents and photographs from the New York Westchester County Child Fatality Review Team and investigator interviews reveals that in two of the three deaths, while nursing pillows were in the sleep environment, the deaths were deemed to be caused by SIDS/undetermined and could not be causally connected to nursing pillows. With regard to the third death, the infant was propped to sleep in a prone position on a crescent-shaped nursing pillow. In summary, from 1992 to the present, staff is aware of a total of three cases where infants died from suffocation after being placed to sleep in a prone position with their heads propped on polyester filled crescent-shaped nursing pillows.

Staff's review revealed that in the vast majority of the 531 deaths associated with pillows and cushions, the infants were found in the prone position, lying on top of the pillow/cushion or with the head or neck propped on the pillow/cushion. A quarter of the deaths occurred in infant cribs, bassinets, cradles and playpens, while the rest occurred outside the normal infant sleep areas, such as on adult beds, on sofas, or on the floor. As with the banned infant bean bag cushion, these pillows and cushions can cause death by suffocation/asphyxiation when an infant is placed to sleep face down on them. According to staff, the analysis of the data does not reveal an increased risk due to any specific type of pillow or cushion filling, but rather it is the softness and malleability which are inherent properties of pillows that are the primary risk factors. The comparative risk of suffocation based upon filling is unknown; however, the greatest common risk factor is that infants were found in the prone position, face down, in the majority of the 531 deaths.

Prone sleeping is a high risk factor for infant suffocation on cushions/pillows. The limited physical and developmental capabilities of infants render them susceptible to danger from suffocation in certain sleeping environments. Physiological abnormalities and delays in the development of vital systems can further hamper an infant's ability to react to a hazardous condition. Infants who are not placed on their backs are especially at risk for suffocation on any type of soft pillow, regardless of the type of filling.

In 1992, the American Academy of Pediatrics, in an effort to reduce the risk

of SIDS, recommended that babies always be placed on their backs when put to sleep. As a result of this campaign, Sudden Infant Death Syndrome (SIDS) deaths between 1992 and 2004 in the United States decreased from 5,000 per year to 2,246 per year (based on vital statistics data of the United States). Although there has been a steady decrease in SIDS deaths, staff found there has not been a similar decrease in infant deaths associated with pillows and cushions. Even though the recommendation to place infants to sleep on their backs is being promoted, staff believes that the data indicates that there are still a significant number of people who continue to place infants to sleep in the prone position. For this reason, staff recommends increased information dissemination targeted at the population of caregivers whose infants are not placed to sleep in the supine position. Increased compliance with the recommendation for supine sleep, as well as continued vigilance in ensuring a safe sleeping environment, would have benefits in reducing the risk of infant suffocation deaths caused by adult pillows, sofa cushions, and other pillows as well as further reducing incidents involving SIDS.

In light of the ongoing risks posed by infant cushions/pillows when used in the sleep environment, the Commission found no justification for repealing the ban on infant cushions/pillows at this time. However, nursing pillows perform a related but different function than infant cushions/pillows. The purpose of nursing pillows is to provide a place for the mother to rest her arms while breastfeeding. The nursing pillow may also serve to give moldable but firm support to enhance comfort during extended periods when changing position during breastfeeding is difficult. The main risk of suffocation arises if the nursing pillow enters into the infant sleeping environment because suffocation can occur if children fall asleep on them in the prone position. However, an infant placed to sleep on any pillow or cushion, including a nursing pillow, in the prone position, is at risk for suffocation, regardless of size, type, shape of pillow or filling. Staff's review showed that when used for its intended purpose—nursing—the risk of infant suffocation on nursing pillows, including the Boston Billow Nursing Pillow, is very low. Staff estimates that 900,000 new nursing pillows are sold annually and that nursing pillows were used by approximately 1.8 million mothers in 2004. Exempting the Boston Billow Nursing Pillow would increase consumer choice by allowing consumers an alternative to the nursing pillows already in the marketplace. Based on the staff's assessment, the Commission preliminarily concludes that an exemption from the ban on infant cushions/pillows should be granted for the Boston Billow Nursing Pillow and substantially similar nursing pillows.[1]

D. Regulatory Flexibility Act Certification

Under the Regulatory Flexibility Act (RFA), when an agency issues a proposed rule, it generally must prepare an initial regulatory flexibility analysis describing the impact the proposed rule is expected to have on small entities. 5 U.S.C. 603. The RFA does not require a regulatory flexibility analysis if the head of the agency certifies that the rule will not have a significant effect on a substantial number of small entities.

The proposed exemption gives all companies more flexibility in the choice of material used in manufacturing nursing pillows. The exemption is deregulatory in nature and will not impose any additional costs on businesses of any size. Consequently, the Commission concludes that the proposed amendment exempting the Boston Billow Nursing Pillow and substantially similar nursing pillows would not have a significant impact on a substantial number of small entities.

E. Environmental Considerations

Generally, CPSC rules are considered to ''have little or no potential for affecting the human environment,'' and environmental assessments are not usually prepared for these rules (see 16 CFR 1021.5(c)(1)). Nothing in this proposed rule alters that expectation. Therefore, the Commission does not expect the proposal to have any negative environmental impact.

F. Executive Orders

According to Executive Order 12988 (February 5, 1996), agencies must state in clear language the preemptive effect, if any, of new regulations. The preemptive effect of this proposed regulation is stated in section 18 of the FHSA. 15 U.S.C. 1261n.

List of Subjects in 16 CFR Part 1500

Consumer protection, Hazardous materials, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, and Toys.

G. Conclusion

For the reasons stated above, the Commission proposes to amend title 16 of the Code of Federal Regulations as follows:

PART 1500—HAZARDOUS SUBSTANCES AND ARTICLES: ADMINISTRATION AND ENFORCEMENT REGULATIONS

1. The authority for part 1500 continues to read as follows:

Authority: 15 U.S.C. 1261–1278.

2. Section 1500.86 is amended by adding a new paragraph (a)(9) to read as follows:

§ 1500.86 Exemptions from classification as banned toy or other banned article for use by children.

(a) * * *

(9) Boston Billow Nursing Pillow and substantially similar nursing pillows that may otherwise meet the criteria of the banned infant cushion/pillow at 16 CFR 1500.18(a)(16)(i).

Dated: August 27, 2008.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E8–20280 Filed 9–2–08; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Infant Cushions/Pillows; Termination of Rulemaking Other Than With Respect to Boston Billow Nursing Pillow and Substantially Similar Nursing Pillows

AGENCY: Consumer Product Safety Commission.

ACTION: Advance notice of proposed rulemaking; partial withdrawal.

SUMMARY: On September 27, 2006, the Commission issued an advance notice of proposed rulemaking (ANPR) to assess whether a rulemaking was necessary to address any unreasonable risk of injury or death which may be associated with the proliferation of infant cushions/pillows and pillow-like products intended for infants in the marketplace, including the Boston Billow Nursing Pillow. 71 FR 56418. After review of the comments, incident reports and other available information, the Commission has determined there is insufficient data or product information on infant cushions/pillows or pillow-like

[1] On February 1, 2008, Acting Chairman Nancy Nord and Commissioner Thomas Moore voted 2–0 to direct the Office of the General Counsel to prepare a notice of proposed rulemaking proposing an exemption for the Boston Billow Nursing Pillow and substantially similar nursing pillows. Acting Chairman Nord also voted to request ASTM to develop a product warning label for the product class.

products, other than the Boston Billow Nursing Pillow and substantially similar nursing pillows, to proceed with further rulemaking on those products at this time. Based on these findings, the Commission terminates the infant cushion/pillow rulemaking other than with respect to the Boston Billow Nursing Pillow and substantially similar nursing pillows.

DATES: The partial termination of the advance notice of proposed rulemaking that published in the **Federal Register** September 27, 2006 (71 FR 56418) is effective September 3, 2008.

FOR FURTHER INFORMATION CONTACT: Suad Wanna-Nakamura, Directorate for Health Sciences, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; telephone (301) 504–7252; e-mail *snakamura@cpsc.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

Between 1985 and 1992, there were 35 infant deaths associated with the use of infant cushions/pillows (also known, among other names, as ''baby beanbag pillows'' and ''beanbag cushions''). In almost all of the cases where the infant's position could be determined, the infant was in a prone, face down, position. 55 FR 42202. The Commission initiated a rulemaking proceeding to assess whether a ban was necessary to address an unreasonable risk of injury and death associated with these types of infant cushions/pillows. Due to the number of infant deaths associated with these products, the Commission proposed a rule to ban infant cushions/pillows with certain characteristics. 56 FR 32352. On June 23, 1992, the Commission issued a rule codified at 16 CFR 1500.18(a)(16)(i), banning infant cushions/pillows that: (1) Have a flexible fabric covering; (2) are loosely filled with a granular material, including but not limited to, polystyrene beads or pellets; (3) are easily flattened; (4) are capable of conforming to the body or face of an infant; and (5) are intended or promoted for use by children under one year of age. 57 FR 27912.

On July 17, 2005, Boston Billows, Inc. (Boston Billows) submitted a petition requesting an amendment to 16 CFR 1500.18(a)(16)(i)(A)–(E) to allow an exception to the ban. The petitioner is the manufacturer of the Boston Billow Nursing Pillow, a granularly filled, C-shaped pillow intended for use by mothers when breastfeeding.

B. The ANPR

The Commission issued an ANPR on September 27, 2006, to assess whether a rulemaking was necessary to address any unreasonable risk of injury or death which may be associated with infant cushions/pillows. 71 FR 56418. In addition to the Boston Billow Nursing Pillow, which met the criteria of the ban, there appeared to be a proliferation of other infant cushions/pillows or pillow-like products in the marketplace, including nursing pillows which met some, but not all, of the criteria set forth in the ban. The potential regulatory alternatives noted included whether to: (1) Amend the regulation to allow an exemption to the ban; (2) delete, revise or add criteria to the ban; (3) leave the existing regulation unchanged; or (4) repeal the existing regulation. Nine written comments were received in response to the ANPR in support of Boston Billows' request for exemption from the ban.

C. Incident Data

Commission staff reviewed the incident data on infant cushions and nursing pillows for the period of January 1992 through June 2007. Staff also reviewed additional data from July 2007 through May 2008. Since 1992, there have been no reported deaths associated with infant cushions meeting the definition of a banned infant cushion/pillow. However, staff identified 531 infant deaths associated with pillows and cushions that did not meet the definition of a banned infant cushion/pillow. (From January 1992 through June 2007, there were 484 deaths reported and from July 2007 through May 2008, there were an additional 47 deaths reported.) The vast majority of these incidents involved adult pillows and sofa cushions which possess many of the same characteristics as the banned bean bag cushions. These products have soft covers and flexible filling material that can conform to an infant's face. A variety of pillow types and cushions with different types of filling including foam, feathers, and polyester were involved in the incidents. In this data set, two infant deaths have been associated with a polyester filled nursing pillow (which does not meet the definition of a banned infant cushion/pillow). One incident occurred in 2001 when a 4-month-old infant was placed to sleep on his stomach in a playpen with his head resting on the nursing pillow. The second incident occurred in 2007, when a 46-day-old infant was placed in a prone position inside a crib with his head propped on the nursing pillow.

CPSC staff was also made aware of three additional deaths in 2006 where a nursing pillow was in the infant's sleep environment. The pillows involved with these deaths were polyester filled crescent-shaped nursing pillows not subject to the CPSC's infant cushion ban. The cause of these deaths in all cases was initially determined by the medical examiner to be Sudden Infant Death Syndrome (SIDS)/undetermined. In 2008, the New York Westchester County Child Fatality Review Team examined the case files for these deaths. Further investigation of these incidents, including review of documents and photographs from the New York Westchester County Child Fatality Review Team and investigator interviews reveals that in two of the three deaths, while nursing pillows were in the sleep environment, the deaths were deemed to be caused by SIDS/undetermined and could not be causally connected to nursing pillows. With regard to the third death, the infant was propped to sleep in a prone position on a crescent-shaped nursing pillow. In summary, from 1992 to the present, staff is aware of a total of three cases where infants died from suffocation after being placed to sleep in a prone position with their heads propped on polyester filled crescent-shaped nursing pillows.

Staff's review revealed that in the vast majority of the 531 deaths associated with pillows and cushions, the infants were found in the prone position, lying on top of the pillow/cushion or with the head or neck propped on the pillow/cushion. A quarter of the deaths occurred in infant cribs, bassinets, cradles and playpens, while the rest occurred outside the normal infant sleep areas, such as on adult beds, on sofas, or on the floor. As with the banned infant bean bag cushion, these pillows and cushions can cause death by suffocation/asphyxiation when an infant is placed to sleep face down on them. According to staff, the analysis of the data does not reveal an increased risk due to any specific type of pillow or cushion filling, but rather it is the softness and malleability which are inherent properties of pillows that are the primary risk factors. The comparative risk of suffocation based upon filling is unknown; however, the greatest common risk factor is that infants were found in the prone position, face down, in the majority of the 531 deaths.

Prone sleeping is a high risk factor for infant suffocation on cushions/pillows. The limited physical and developmental capabilities of infants render them susceptible to danger from suffocation

in certain sleeping environments. Physiological abnormalities and delays in the development of vital systems can further hamper an infant's ability to react to a hazardous condition. Infants who are not placed on their backs are especially at risk for suffocation on any type of soft pillow, regardless of the type of filling.

In 1992, the American Academy of Pediatrics, in an effort to reduce the risk of SIDS, recommended that babies always be placed on their backs when put to sleep. As a result of this campaign, Sudden Infant Death Syndrome (SIDS) deaths between 1992 and 2004 in the United States decreased from 5,000 per year to 2,246 per year (based on vital statistics data of the United States). Although there has been a steady decrease in SIDS deaths, staff found there has not been a similar decrease in infant deaths associated with pillows and cushions. Even though the recommendation to place infants to sleep on their backs is being promoted, staff believes that the data indicates that there are still a significant number of people who continue to place infants to sleep in the prone position. For this reason, staff recommends increased information dissemination targeted at the population of caregivers whose infants are not placed to sleep in the supine position. Increased compliance with the recommendation for supine sleep, as well as continued vigilance in ensuring a safe sleeping environment would have benefits in reducing the risk of infant suffocation deaths caused by adult pillows, sofa cushions, and other pillows as well as further reducing incidents involving SIDS.

D. Conclusion

In light of the ongoing risks posed by infant cushions/pillows when used in the sleep environment, the Commission finds no justification for repealing the ban on infant cushions/pillows at this time. Moreover, after review of the comments, incident reports and other available information, the Commission determines there is insufficient data or product information on infant cushions/pillows or pillow-like products intended for infants, other than with respect to the Boston Billow Nursing Pillow and substantially similar nursing pillows, to proceed with further rulemaking on those products at this time. Thus, the Commission is terminating the rulemaking on infant cushions/pillows or pillow-like products, other than with respect to the Boston Billow Nursing Pillow and substantially similar nursing pillows effective upon publication in the **Federal Register** for good cause shown in accordance with 5 U.S.C. 553(d)(3).[1] A proposed exemption from the ban for the Boston Billow Nursing Pillow and substantially similar nursing pillows appears elsewhere in this **Federal Register**.[2]

Dated: August 27, 2008.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E8–20282 Filed 9–2–08; 8:45 am]

BILLING CODE 6355–01–P

[1] On February 1, 2008, Acting Chairman Nancy Nord and Commissioner Thomas Moore voted 2–0 to direct the Office of the General Counsel to prepare a notice terminating the rulemaking other than with respect to the Boston Billow Nursing Pillow and substantially similar nursing pillows.

[2] On February 1, 2008, Acting Chairman Nancy Nord and Commissioner Thomas Moore voted 2–0 to direct the Office of the General Counsel to prepare a notice of proposed rulemaking proposing an exemption for the Boston Billow Nursing Pillow and substantially similar nursing pillows. Acting Chairman Nord also voted to request ASTM to develop a product warning label for the product class.

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

RIN 0596–AC79

Sale and Disposal of National Forest Service System Timber; Timber Sale Contracts; Market-Related Contract Term Additions

AGENCY: Forest Service, USDA.

ACTION: Proposed rule; request for public comment.

SUMMARY: The Forest Service proposes amending its regulations to expand the maximum amount of additional time certain contracts may receive when there is a continuous and prolonged drastic reduction in wood product prices for 2½ years or longer. Additionally, the proposed rule modifies the procedure for selecting the producer price index to be used in establishing market-related contract term additions and emergency rate redeterminations. Finally, this proposed rule makes a change to the amount of additional market-related contract term addition time that may be added to timber sale contracts when the normal operating season specified in a contract is less than three months.

DATES: Comments must be received in writing on or before October 3, 2008.

ADDRESSES: Written comments concerning this notice should be addressed to USDA Forest Service, Director of Forest Management, 1400 Independence Avenue, SW., Mail Stop 1103, Washington, DC 20250–1103. Comments may also be sent via e-mail to *mrcta@fs.fed.us*, or via facsimile to Lathrop Smith at (202) 205–1045.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the office of the Director of Forest Management, Third Floor, Southwest Wing, Yates Building, 201 14th Street, SW., Washington, DC. Visitors are encouraged to call ahead to (202) 205–1496 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Lathrop Smith, Forest Management staff, at (202) 205–0858, or Richard Fitzgerald, Forest Management staff, at (202) 205–1753.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

Prior to 1980, purchasers of National Forest timber defaulted very few timber sale contracts. Cyclic fluctuations in forest products markets occurred but were of comparatively short duration and limited impact. Forest Service timber sale contract terms were often as long as the cycles making it possible to overlap the market price cycles. Prior to 1980, it also was believed that the long-term projection for forest products prices indicated a continuing trend of price increases. Under those circumstances a purchaser could usually schedule a sale's harvest for a time when the markets were good or were at least good enough that the purchaser would not lose more money operating a sale than would be lost in a default.

Beginning in 1980, the forest products market began a serious and dramatic decline, leaving a large number of purchasers with timber sales bid at prices far higher than the market was bringing. Faced with the likelihood of massive defaults and attendant adverse economic impacts on industry and dependent communities, the government began taking steps to respond to the adverse economic impacts. In 1980, 1981, and 1982, the Chief of the Forest Service granted timber sale contract term extensions based on findings of substantial overriding public interest (48 FR 38862). The intent of these extensions was to provide purchasers additional contract

time until the markets improved. Unfortunately, the adverse market conditions continued.

On October 16, 1984, the President signed into law the Federal Timber Contract Payment Modification Act (16 U.S.C. 618) (Buy-Out Act). The Buy-Out Act allowed purchasers of Federal timber to return certain sales to the government upon payment of a ''buy-out charge'' and, thus, avoid default. Both the Congress and the Administration viewed this legislation as an extraordinary measure to respond to a one-time crisis and recognized the need to develop mechanisms to avoid such a crisis in the future.

On November 6, 1987, the Forest Service published a proposed rule (52 FR 43020) to establish procedures for extending contract termination dates in response to adverse conditions in the timber market. This proposed Market-Related Contract Term Addition rule was published as part of a larger proposal that included rules for implementing downpayment and periodic payment procedures as required by the Federal Timber Contract Modification Act. The intent of these rules was to encourage orderly harvest of national forest timber sales, ensure the government's financial security, and avoid the need for future buyouts in periods of severe market decline.

Market declines sufficient to trigger a market-related contract term addition generally coincide with downturns in housing starts in conjunction with national economic slowdowns. In the early 1980s, such economic distress broadly affected community stability and the ability of industry to supply construction lumber and other products for public use and threatened the maintenance of plant capacity necessary to meet the Nation's needs for wood products from domestic sources.[1] Accordingly, in order to ensure the retention of a viable established industry capable of supplying the wood fiber needs of the public for housing and other products, the Chief of the Forest Service issued a final rule on December 7, 1990, finding that the substantial overriding public interest justifies market-related contract term additions whenever there is a drastic reduction in wood product prices (55 FR 50643).

The Chief's finding was based on the fact that market-related contract term additions: (1) Help purchasers avoid severe financial hardship; (2) ensure that the Federal government receives payments due from purchasers by reducing the likelihood of default; and (3) help ensure that receipts to States and counties from timber sales are not adversely affected by contract defaults. Additionally, market-related contract term additions help promote stability in the wood products industry. This in turn helps ensure community stability, competition, employment, investment, productivity, innovation and the industry infrastructure needed by the Forest Service to accomplish land management objectives most economically done with timber sales.

In accordance with the December 7, 1990, final rule, the Forest Service monitors and uses producer price indices for wood products as prepared by the Bureau of Labor Statistics to determine when a drastic reduction in wood product prices has occurred. The Forest Service currently uses the Softwood Lumber Index (WPU0811), the Hardwood Lumber index (WPU0812) and the Wood Chips index (PCU3211133211135). Each index monitors different segments of the wood products industry. Each contract over one year in length is assigned the index that represents more than one-half of the advertised volume. When a drastic reduction in the assigned index has occurred for two consecutive quarters during the contract period, the Forest Service notifies purchasers and, upon a purchaser's written request, adds one year to the contract term. For each additional consecutive quarter a drastic reduction occurs, the Forest Service, upon a purchaser's written request, adds an additional 3 month period to the normal operating season of the contract.

Under the current rule, no more than twice the original contract length or 3 years, whichever is less, may be added to a contract's term by market-related contract term addition. Pursuant to the National Forest Management Act of 1976 (16 U.S.C. 472a(c)), total contract length cannot exceed 10 years as the result of market-related contract term addition. Further, market-related contract time may not be granted for those portions of the contract that (1) have a required completion date, (2) the Forest Service determines that the timber is in need of urgent removal, or (3) timber deterioration or resource damage will result from delay.

Since the market-related contract term addition rule was adopted, a drastic reduction in softwood lumber prices occurred for five quarters in 1994–1995, three quarters in 1998, six quarters in 2000–2001, and for 11 quarters beginning in September 2005, through March 2008. The hardwood index has also shown a drastic reduction in the first two quarters of 2008. As a result, many purchasers requested and received additional contract time for qualifying timber sales.

The drastic decline in softwood lumber prices in the early 1980s began following a peak in the softwood lumber index in the third quarter of 1978 and bottomed out four years later in the third quarter of 1982. During that decline the index, adjusted to a constant dollar basis, lost 56 points or 36 percent of its value. By comparison, the current decline of the softwood lumber index is already greater in magnitude. The current decline began following a peak in August 2004, and by March 2008, the index, adjusted to a constant dollar basis, had lost 76 points or 48.5 percent of its value. It is unknown when the current decline will end.

The intent of the market-related contract term addition regulations are to avert massive defaults and attendant adverse economic impacts on industry and dependent communities by providing purchasers additional contract time until markets improve. Since adoption of the regulations in 1990, the three-year limit on market-related contract term additions has met that objective in the three previous periods when a drastic reduction in wood prices occurred. But, when a drastic decline in wood prices continues for over three years as it currently has and the market-related contract term additions run out before markets improve, purchasers holding high priced sales bid when the markets were stronger are likely to face severe economic hardship without some form of relief.

As of May 1, 2008, there were 1,030 non-salvage sales awarded prior to April 1, 2007, that were over one year in original contract length and with volume remaining to remove. Approximately twenty-three percent, or 239 of those sales, have received additional contract time totaling three years or more, and over half of those sales were awarded prior to the softwood index peaking in August 2004. The additional time granted in excess of the maximum market-related contract term addition time was for reasons unrelated to market conditions such as adverse weather conditions that prevented operations.

To respond to the poor market conditions and associated adverse economic impacts on industry and dependent communities, Section 8401 of the Food, Conservation, and Energy Act of 2008, Public Law 110–246, 122 Stat. 1651 (June 18, 2008), authorized the Forest Service to add up to four years of market-related contract term addition to contracts awarded prior to

[1] Forest Service paper Policy Alternatives for Market-Related Contract Term Additions, June 27, 1996.

January 1, 2007. While section 8401 provides immediate relief to contracts that had or were about to reach the three-year limit, the committee notes for section 8401 state *''the Managers encourage the Forest Service to revise the existing regulations within 90 days of enactment of this Act to reflect provisions of this section for future market problems.''*

In light of the managers' statement, and to address prolonged adverse market conditions in the future, the Forest Service proposes amending the market-related contract term addition regulations at 36 CFR 223.52 to allow certain contracts to receive more than three years of additional time when there is a prolonged drastic reduction in wood product prices. To be eligible for market-related contract term addition time in excess of three years, contracts must meet the conditions for market-related contract term addition in § 223.52, and the index specified in the contract must trigger for eleven consecutive quarters following the award date in the contract. The criteria of eleven consecutive quarters was selected because under the formula for granting market-related contract term additions, all sales will have reached the three year limit, prior to, but no later than, the tenth consecutive quarter (§ 223.52(c)(3)). Beginning with the eleventh consecutive qualifying quarter, and for each subsequent consecutive qualifying quarter, the contract may receive an additional three months of normal operating season time. Contracts where all biddable species were at base rates during any quarter between the original contract termination date and any adjusted termination date will not be eligible for more than three years of market-related contract term addition. The rationale for this criterion is that sales at base rates have stumpage prices as low as permitted, so additional time for market conditions to improve is not needed.

Under this proposed rule, the maximum amount of market-related contract term addition time a contract awarded after December 31, 2006, may receive will be controlled by the 10-year limit on total contract length established under the National Forest Management Act of 1976 (16 U.S.C. 472a(c)). But, pursuant to the 2008 Farm Bill, sales awarded prior to January 1, 2007, may only have the termination date adjusted by up to four calendar years as the result of market-related contract term addition.

An additional proposed amendment to the market-related contract term addition regulations at 36 CFR 223.52 will authorize contracting officers to select an index at the time certain contracts are awarded that is different from the one identified in the sample contract. Each timber sale contract over one year in length includes one of three producer price indices (softwood lumber, hardwood lumber or wood chips) updated monthly by the Bureau of Labor Statistics. The index selected for each sale is based on the species and product characteristics that represent more than one-half of the advertised volume. The index is used to determine when the contract is eligible for a market-related contract term addition and/or an emergency rate redetermination. This proposed rule change would authorize contracting officers to select an alternative producer price index at the time a contract is awarded when the appropriate Forest Supervisor has determined, prior to advertising the contract, that the species and potential product characteristics are such that more than one index could represent more than one-half of the advertised volume. Upon a purchaser's written request, the contracting officer could select an alternative index to the one identified in the sample contract if the contracting officer determines that the alternative index better represents the highest percentage of the products the successful bidder intends to produce or have produced from the sale.

On sales providing this alternative index option, all bidders will have an equal opportunity to substitute a more representative index, which should reduce the risk of potential bid protests over this change. Providing bidders with a process for changing the index on sales where more than one index may be applicable may also result in higher bids. For these sales, the prospectus will state that the contracting officer may, upon the purchaser's written request, select an alternative index from paragraph (b), and may modify the contract by mutual agreement, at time of contract award, to include an alternative index that the contracting officer has determined represents the highest percentage of products the purchaser intends to produce or have produced from the sale. The purchaser will be required to make a written request for an index change that includes documentation showing how the purchaser anticipates the timber will be processed. If the purchaser is a non-manufacturer, the written request should show the percentage of sale volume the purchaser intends to deliver to different manufactures, such as 75 percent to an oriented strand board processor (OSB) and 25 percent to a pulp mill.

This change to the regulation is needed because different uses of technology for processing forest products continue to evolve. Thus selecting the appropriate index prior to knowing who the purchaser will be and what products will be produced may not be possible when a sale is offered. For example, a sale that is predominantly aspen may be sold in a market area that has a pulp mill, an OSB mill, and a sawmill capable of processing aspen lumber. Since the pulp mill is the closest mill to the sale, it is used as the appraisal under the current regulation. Consequently, the Forest Service assigns the wood chips index to the sale when it is advertised. If the pulp mill owner buys the sale, the wood chips index is the correct index for the product that will be produced and a change of index would not be appropriate. However, if the OSB mill owner buys the sale, the softwood lumber index would be more appropriate since OSB is a building material that tends to follow softwood lumber prices. Further, if the sawmill owner buys the sale, the hardwood lumber index may be most appropriate, unless the principal aspen product is pannelling, in which case the softwood lumber index may be most appropriate. In addition, if a non-manufacturer buys the sale with the intention of merchandizing the wood to all three mills, the most appropriate index would be based on which mill is expected to process the highest percentage of the sale volume. In this example, if the purchaser intended to sell 40 percent of the sale volume to the OSB mill, 30 percent to the pulp mill and 30 percent to the hardwood lumber mill, the appropriate index would be softwood lumber as it is the index representing the single greatest percentage of volume. While this estimate is based on market conditions at the time the contract is awarded, the purchaser can change the mix of products produced during the life of the sale. However, the purchaser will not be permitted to change the index after award unless that index is discontinued and/or the Forest Service adopts and offers replacement indices.

Another example occurred in 2006 and 2007 on certain sales using the wood chips index. In November 2006 (71 FR 66160) and again in November 2007 (72 FR 64991), specified timber sales were granted one year extensions based on a determination of substantial overriding public interest. Excluded from these extensions were sales on the softwood lumber index because those sales were already receiving market-related contract term additions. Most of the substantial overriding public interest extensions granted went to sales

in the lake states region (predominately Minnesota) that were on the wood chips index despite the fact that most of the wood was actually being manufactured into oriented strand board. Although oriented strand board prices were plummeting along with softwood lumber prices, these sales were not eligible for market-related contract term additions because the wood chips index remained high. If the index on those sales had been changed from wood chips to softwood lumber when those contracts were awarded, the substantial overriding public interest extensions would not have been needed. To avert that situation in the future, and to implement the Managers' direction for the 2008 Farm Bill, a process for changing the index at the time of award when more than one index may be appropriate is needed.

Expanding existing rights to market-related contract term addition to include a procedure for changing the index at the time of contract award is in the public interest. In most market areas, the species product combinations are easy to identify prior to offering a sale, and there will be little need or justification to change the index at the time of contract award. However, in situations such as the examples described above where more than one index may apply, a procedure for changing the index when the contract is awarded to reflect the principal product the purchaser intends to produce is needed. The objective is to allow the parties to enter into contracts under terms that reflect market conditions at the time of award; it is not to guarantee profitable market conditions or a certain level of profit throughout the life of the contract. The intended effect is to avert the need for substantial overriding public interest extensions, determinations, as well as legislation like the 2008 Farm Bill, which provides relief to contracts with indices that became mismatched with, or did not reflect, the products the purchaser produced.

Currently, 36 CFR 223.52(a)(2) provides that the Forest Supervisor shall select from the available indices in § 223.52(b) the index to be used in each contract based on the species and product characteristics, by volume, included in a contract. The existing rule also provides that the index selected shall represent more than one-half of the advertised volume. The existing rule is silent as to when Forest Supervisors must choose an appropriate index but the practice has been to identify the index when a contract is advertised.

Buying a sale that uses an index that does not represent the principal product a purchaser intends to produce increases the purchaser's risk that a drastic reduction in the prices of the wood products it is producing will not result in a market-related contract term addition. Providing a procedure to change the index once the purchaser and the principal product it intends to produce are identified will have the effect of reducing the purchaser's risk, which may also increase bids.

Finally, under the current regulation, a contract may receive a one year market-related contract term addition when there are two consecutive qualifying quarters and may receive three months of additional time within the contract's normal operating season for each subsequent consecutive qualifying quarter subject to the limits on total additional contract time. Some sales have a normal operating season that is less than three months resulting in a situation where the contract could be extended for more than one year if three months of normal operating season is added to the contract term. This proposed change will limit the amount of additional time to no more than one-calendar year when the normal operating season is less than three months.

Regulatory Certifications

Regulatory Impact

This proposed rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this proposed rule is not a significant regulatory action and is not subject to Office of Management and Budget (OMB) review. This proposed rule will not have an annual effect of $100 million or more on the economy and will not adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities. This proposed rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Little or no effect on the national economy will result from this regulatory action, which consists of necessary, technical changes to the regulation governing market-related contract term additions. Using the replacement indices and the modified formula contained in this proposed rule, the Forest Service will be able to determine whether a drastic decline in wood products prices has occurred. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this proposed rule is not subject to OMB review under Executive Order 12866.

Moreover, this proposed rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 610 *et seq.*), and it is hereby certified that this action will not have a significant economic impact on a substantial number of small entities as defined by that act. As revised in this proposed rule, the Forest Service will be able to grant additional market-related contract term additions to small and large purchasers when there is a prolonged drastic reduction in wood product prices. This will have the intended effect of averting massive defaults and attendant adverse economic impacts on industry and dependent communities by providing purchasers additional contract time until markets improve.

Proper Consideration of Small Entities

This proposed rule has been considered in light of Executive Order 13272 regarding proper consideration of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Forest Service has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by SBREFA.

To the extent that the proposed rule imposes additional requirements on small entities, these requirements are the minimum necessary to protect the public interest, are not administratively burdensome or costly to meet, and are well within the capability of small entities to perform.

Unfunded Mandates Reform

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the Forest Service has assessed the effects of this proposed rule on State, local, and tribal governments and the private sector. This proposed rule does not compel the expenditure of $100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Environmental Impact

This proposed rule concerns the extension of timber sale contracts when warranted by a drastic reduction in wood product prices, and, as such, has no direct effect upon the amount, location, or manner of timber offered for purchase. Section 31.1b of Forest Service Handbook 1909.15 (57 FR

43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.'' The agency's assessment is that this rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

Controlling Paperwork Burdens on the Public

This proposed rule includes information collection requirements as defined in 5 CFR part 1320. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) and implementing regulations at 5 CFR part 1320 apply. This collection of information was submitted to the Office of Management and Budget (OMB) and received emergency approval under OMB No. 0596–0212. Notice of this information collection and request for comment was published in the **Federal Register** on July 22, 2008 (73 FR 42542). This rule contains no additional information collection under the Paperwork Reduction Act.

Energy Effects

This proposed rule has been reviewed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this proposed rule does not constitute a significant energy action as defined in the Executive order.

Federalism

The agency has considered this proposed rule under the requirements of Executive Order 13132, Federalism. The agency has made an assessment that the proposed rule conforms with the federalism principles set out in this Executive Order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Consultation and Coordination With Indian Tribal Governments

This proposed rule does not have tribal implications as defined in Executive Order 13175, Consultation and Coordination With Indian Tribal Governments, and, therefore, advance consultation with tribes is not required.

No Takings Implications

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the rule does not pose the risk of a taking of Constitutionally-protected private property.

Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. The agency has not identified any State or local laws or regulations that are in conflict with this regulation or that would impede full implementation of this rule. In any event, after adoption of this proposed rule: (1) All State and local laws or regulations that conflict with this rule or that would impede full implementation would be preempted; (2) no retroactive effect would be given to this final rule, except as described herein; and (3) the proposed rule would not require the use of administrative proceedings before parties could file suit in court challenging its provisions.

List of Subjects in 36 CFR Part 223

Administrative practice and procedure, Exports, Forests and forest products, Government contracts, National forests, Reporting and recordkeeping requirements.

Therefore, for the reasons set forth in the preamble, part 223 of Title 36 of the Code of Federal Regulations is amended as follows:

PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER

1. The authority citation for part 223 continues to read as follows:

Authority: 90 Stat. 2958, 16 U.S.C. 472a; 98 Stat. 2213; 16 U.S.C. 618, 104 Stat. 714–726, 16 U.S.C. 620–620j, unless otherwise noted.

2. Amend § 223.52 by revising paragraphs (a)(2) and (c)(2) through (4) to read as follows:

§ 223.52 Market-related contract term additions.

(a) * * *

(2) The contract term addition provision of the contract must specify the index to be applied to each sale. The Forest Supervisor shall determine, and select from paragraph (b) of this section, the index to be used for each sale based on the species and product characteristics, by volume, being harvested on the sale. The index specified shall represent more than one-half of the advertised volume. If none of the indices in paragraph (b) represent more than one half of the advertised volume, the index specified shall represent the species product combination representing the highest percentage of volume for which there is an index. When the Forest Supervisor determines that the species and potential product characteristics are such that more than one index could be used, the prospectus will state that the Contracting Officer may, upon the purchaser's written request, select an alternative index from paragraph (b), and may modify the contract by mutual agreement, at time of contract award, to include an alternative index that the Contracting Officer has determined represents the highest percentage of products the purchaser intends to produce or have produced from the sale. Purchasers seeking a change of index at time of award must substantiate the need for an alternative index by providing the Contracting Officer with a written request including a list of products by volume it intends to produce or expects will be produced from the timber on that sale. In the event a mutual agreement to modify a contract to include an alternative index is not reached at time of award, the index specified in the sample contract shall apply.

* * * * *

(c) * * *

(2) For each additional consecutive quarter in which a contract qualifies for a market-related contract term addition, the Forest Service will, upon the purchaser's written request, add an additional 3 months during the normal operating season to the contract, except that sales with a normal operating season of less than 3 months may only receive additional time equal to their normal operating season.

(3) No more than 3 years of MRCTA time shall be added to a contract's term by market-related contract term addition unless the following conditions are met:

(i) The sale was awarded after December 31, 2006;

(ii) During each quarter between the original contract termination date and the current termination date, contract rates for one or more of the biddable species exceeded base rates; and

(iii) A drastic reduction in wood product prices occurred for eleven consecutive qualifying quarters.

(4) For contracts eligible for more than 3 calendar years of market-related contract term addition under § 223.52(c)(3), beginning with the eleventh consecutive qualifying quarter, and for each subsequent consecutive qualifying quarter, the Forest Service will, upon the purchaser's written request, add an additional 3 months during the normal operating season to

the contract, except that sales with a normal operating season of less than 3 months may only receive additional time equal to their normal operating season.

* * * * *

Dated: August 26, 2008.

Sally Collins,

Associate Chief, Forest Service.

[FR Doc. E8–20301 Filed 9–2–08; 8:45 am]

BILLING CODE 3410–11–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2008–0574, EPA–HQ–SFUND–2008–0575, EPA–HQ–SFUND–2008–0576, EPA–HQ–SFUND–2008–0577, EPA–HQ–SFUND–2008–0579, EPA–HQ–SFUND–2008–0580, EPA–HQ–SFUND–2008–0581, EPA–HQ–SFUND–2008–0582, EPA–HQ–SFUND–2008–0583, EPA–HQ–SFUND–2008–0584, EPA–HQ–SFUND–2008–0585, EPA–HQ–SFUND–2008–0586; FRL–8710–7]

RIN 2050–AD75

National Priorities List, Proposed Rule No. 49

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'' or ''the Act''), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the Agency'') in determining which sites warrant further investigation. These further investigations will allow EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule proposes to add 11 sites to the NPL, 10 to the General Superfund Section and 1 to the Federal Facilities Section. This rule also withdraws one site from proposal to the NPL.

DATES: Comments regarding any of these proposed listings must be submitted (postmarked) on or before November 3, 2008.

ADDRESSES: Identify the appropriate FDMS Docket Number from the table below.

FDMS DOCKET IDENTIFICATION NUMBERS BY SITE

Site name	City/state	FDMS Docket ID No.
B.F. Goodrich	Rialto, CA	EPA–HQ–SFUND–2008–0574.
Raleigh Street Dump	Tampa, FL	EPA–HQ–SFUND–2008–0575.
Arkla Terra Property	Thonotosassa, FL	EPA–HQ–SFUND–2008–0576.
U.S. Smelter and Lead Refinery, Inc	East Chicago, IN	EPA–HQ–SFUND–2008–0577.
Fort Detrick Area B Ground Water	Frederick, MD	EPA–HQ–SFUND–2008–0585.
Curtis Papers, Inc	Milford, NJ	EPA–HQ–SFUND–2008–0579.
Behr Dayton Thermal System VOC Plume	Dayton, OH	EPA–HQ–SFUND–2008–0580.
New Carlisle Landfill	New Carlisle, OH	EPA–HQ–SFUND–2008–0581.
Borit Asbestos Tailings Pile	Ambler, PA	EPA–HQ–SFUND–2008–0582.
Barite Hill/Nevada Goldfields	McCormick, SC	EPA–HQ–SFUND–2008–0583.
U.S. Magnesium	Tooele County, UT	EPA–HQ–SFUND–2008–0584.
Kennecott (South Zone)	Copperton, UT	EPA–HQ–SFUND–2008–0586.

Submit your comments, identified by the appropriate FDMS Docket number, by one of the following methods:

- *www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail: superfund.Docket@epa.gov.*
- *Mail:* Mail comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; (Mail Code 5305T); 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *Hand Delivery or Express Mail:* Send comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue; EPA West, Room 3340, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday excluding Federal holidays). Special arrangements should be made for deliveries of boxed information.

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

or viruses. For additional Docket addresses and further details on their contents, see section II, ''Public Review/Public Comment,'' of the **SUPPLEMENTARY INFORMATION** portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Robert Myers, phone (703) 603–8851, *myers.robert@epa.gov*, Site Assessment and Remedy Decisions Branch, Assessment and Remediation Division, Office of Superfund Remediation and Technology Innovation (Mail Code 5204P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

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I. Background

A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases or threatened releases of hazardous substances, and releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What Is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, or releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action.'' ''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases of hazardous substances, pollutants or contaminants (42 U.S.C. 9601(23)).

C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the ''General Superfund Section''), and one of sites that are owned or operated by other Federal agencies (the ''Federal Facilities Section''). With respect to sites in the Federal Facilities Section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing a Hazard Ranking System (''HRS'') score and determining whether the facility is placed on the NPL. At Federal Facilities Section sites, EPA's role is less extensive than at other sites.

D. How Are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the HRS that EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances, pollutants or contaminants to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL. (2) Pursuant to 42 U.S.C. 9605(a)(8)(B), each State may designate a single site as its top priority to be listed on the NPL, without any HRS score. This provision of CERCLA requires that, to the extent practicable, the NPL include one facility designated by each State as the greatest danger to public health, welfare, or the environment among known facilities in the State. This mechanism for listing is set out in the NCP at 40 CFR 300.425(c)(2). (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without any HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658) and generally has updated it at least annually.

E. What Happens to Sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions. * * *'' 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. Does the NPL Define the Boundaries of Sites?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so. Indeed, the precise nature and extent of the site are typically not known at the time of listing.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. However, the NPL site is not necessarily coextensive with the boundaries of the installation or plant, and the boundaries of the installation or plant are not necessarily the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location where that contamination has come to be located, or from where that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the ''Jones Co. plant site'') in terms of the property owned by a particular party, the site, properly understood, is not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to, nor confined by, the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. In addition, the site name is merely used to help identify the geographic location of the contamination and is not meant to constitute any determination of liability at a site. For example, the name ''Jones Co. plant site,'' does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the Remedial Investigation (''RI'') ''is a process undertaken * * * to determine the nature and extent of the problem presented by the release'' as more information is developed on site contamination, and which is generally performed in an interactive fashion with the Feasibility Study (''FS'') (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, the HRS inquiry focuses on an evaluation of the threat posed and therefore the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, it can submit supporting information to the Agency at any time after it receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How Are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met: (i) Responsible parties or other persons have implemented all appropriate response actions required, (ii) all appropriate Superfund-financed response has been implemented and no further response action is required, or (iii) the remedial investigation has shown the release poses no significant

threat to public health or the environment, and taking of remedial measures is not appropriate.

H. May EPA Delete Portions of Sites From the NPL as They Are Cleaned Up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and made available for productive use.

I. What Is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved, (2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls), or (3) the site qualifies for deletion from the NPL. For the most up-to-date information on the CCL, see EPA's Internet site at *http://www.epa.gov/superfund*.

J. What Is the Sitewide Ready for Anticipated Use Measure?

The Sitewide Ready for Anticipated Use measure (formerly called Sitewide Ready-for-Reuse) represents important Superfund accomplishments and the measure reflects the high priority EPA places on considering anticipated future land use as part of our remedy selection process. See Guidance for Implementing the Sitewide Ready-for-Reuse Measure, May 24, 2006, OSWER 9365.0–36. This measure applies to final and deleted sites where construction is complete, all cleanup goals have been achieved, and all institutional or other controls are in place. EPA has been successful on many occasions in carrying out remedial actions that ensure protectiveness of human health and the environment, including current and future land users, in a manner that allows contaminated properties to be restored to environmental and economic vitality while ensuring protectiveness for current and future land users. For further information, please go to *http://www.epa.gov/superfund/programs/recycle*.

II. Public Review/Public Comment

A. May I Review the Documents Relevant to This Proposed Rule?

Yes, documents that form the basis for EPA's evaluation and scoring of the sites in this rule are contained in public Dockets located both at EPA Headquarters in Washington, DC, in the Regional offices and by electronic access at *www.regulations.gov* (see instructions in the **ADDRESSES** section above).

B. How Do I Access the Documents?

You may view the documents, by appointment only, in the Headquarters or the Regional Dockets after the publication of this proposed rule. The hours of operation for the Headquarters Docket are from 8:30 a.m. to 4:30 p.m., Monday through Friday excluding Federal holidays. Please contact the Regional Dockets for hours.

The following is the contact information for the EPA Headquarters Docket: Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue; EPA West, Room 3340, Washington, DC 20004; 202/566–1744. (Please note this is a visiting address only. Mail comments to EPA Headquarters as detailed at the beginning of this preamble.)

The contact information for the Regional Dockets is as follows:

Joan Berggren, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records and Information Center, Mailcode HSC, One Congress Street, Suite 1100, Boston, MA 02114–2023; 617–918–1417.

Dennis Munhall, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212–637–4343.

Dawn Shellenberger (ASRC), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3PM52, Philadelphia, PA 19103; 215–814–5364.

Debbie Jourdan, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW, 9th floor, Atlanta, GA 30303; 404–562–8862.

Janet Pfundheller, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Superfund Division SRC–7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312–353–5821.

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Mailcode 6SF–RA, Dallas, TX 75202–2733; 214–665–7436.

Michelle Quick, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Kansas City, KS 66101; 913–551–7335.

Gwen Christiansen, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 1595 Wynkoop Street, Mailcode 8EPR–B, Denver, CO 80202–1129; 303–312–6463.

Dawn Richmond, Region 9 (AZ, CA, HI, NV, AS, GU), U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105; 415–972–3097.

Ken Marcy, Region 10 (AK, ID, OR, WA), U.S. EPA, 1200 6th Avenue, Mail Stop ECL–115, Seattle, WA 98101; 206–463–1349.

You may also request copies from EPA Headquarters or the Regional Dockets. An informal request, rather than a formal written request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents. Please note that due to the difficulty of reproducing oversized maps, oversized maps may be viewed in-person, however EPA dockets are not equipped to either copy and mail out such maps or scan them and send them out electronically.

You may use the Docket at *www.regulations.gov* to access documents in the Headquarters Docket (see instructions included in the **ADDRESSES** section above). Please note that there are differences between the Headquarters Docket and the Regional Dockets and those differences are outlined below.

C. What Documents Are Available for Public Review at the Headquarters Docket?

The Headquarters Docket for this rule contains the following for the sites proposed in this rule: HRS score sheets; Documentation Records describing the information used to compute the score; information for any sites affected by particular statutory requirements or EPA listing policies; and a list of documents referenced in the Documentation Record.

D. What Documents Are Available for Public Review at the Regional Dockets?

The Regional Dockets for this rule contain all of the information in the Headquarters Docket, plus, the actual reference documents containing the data principally relied upon and cited by EPA in calculating or evaluating the HRS score for the sites. These reference documents are available only in the Regional Dockets.

E. How Do I Submit My Comments?

Comments must be submitted to EPA Headquarters as detailed at the beginning of this preamble in the **ADDRESSES** section. Please note that the mailing addresses differ according to

method of delivery. There are two different addresses that depend on whether comments are sent by express mail or by postal mail.

F. What Happens to My Comments?

EPA considers all comments received during the comment period. Significant comments are typically addressed in a support document that EPA will publish concurrently with the **Federal Register** document if, and when, the site is listed on the NPL.

G. What Should I Consider When Preparing My Comments?

Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific information that EPA should consider and how it affects individual HRS factor values or other listing criteria (*Northside Sanitary Landfill* v. *Thomas,* 849 F.2d 1516 (D.C. Cir. 1988)). EPA will not address voluminous comments that are not referenced to the HRS or other listing criteria. EPA will not address comments unless they indicate which component of the HRS documentation record or what particular point in EPA's stated eligibility criteria is at issue.

H. May I Submit Comments After the Public Comment Period Is Over?

Generally, EPA will not respond to late comments. EPA can only guarantee that it will consider those comments postmarked by the close of the formal comment period. EPA has a policy of generally not delaying a final listing decision solely to accommodate consideration of late comments.

I. May I View Public Comments Submitted by Others?

During the comment period, comments are placed in the Headquarters Docket and are available to the public on an ''as received'' basis. A complete set of comments will be available for viewing in the Regional Dockets approximately one week after the formal comment period closes.

All public comments, whether submitted electronically or in paper, will be made available for public viewing in the electronic public Docket at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose disclosure is restricted by statute. Once in the public Dockets system, select ''search,'' then key in the appropriate Docket ID number.

J. May I Submit Comments Regarding Sites Not Currently Proposed to the NPL?

In certain instances, interested parties have written to EPA concerning sites that were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if still appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to the period of formal proposal and comment will not generally be included in the Docket.

III. Contents of This Proposed Rule

A. Proposed Additions to the NPL

In today's proposed rule, EPA is proposing to add 11 sites to the NPL, 10 to the General Superfund Section and 1 to the Federal Facilities Section. All of the sites in this proposed rulemaking are being proposed based on HRS scores of 28.50 or above. The sites are presented in the table below.

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/county
CA	B.F. Goodrich	Rialto.
FL	Raleigh Street Dump	Tampa.
FL	Arkla Terra Property	Thonotosassa.
IN	U.S. Smelter and Lead Refinery, Inc	East Chicago.
NJ	Curtis Papers, Inc	Milford.
OH	Behr Dayton Thermal System VOC Plume	Dayton.
OH	New Carlisle Landfill	New Carlisle.
PA	Borit Asbestos Tailings Pile	Ambler.
SC	Barite Hill/Nevada Goldfields	McCormick.
UT	U.S. Magnesium	Tooele County.

TABLE 2—FEDERAL FACILITIES SECTION

State	Site name	City/county
MD	Fort Detrick Area B Ground Water	Frederick.

B. Withdrawal of Site From Proposal to the NPL

EPA is withdrawing the proposal to add the Kennecott (South Zone) site in Copperton, Utah to the NPL, because all cleanup projects have been completed and no further EPA actions are needed. The proposed rule can be found at 59 FR 2568 (January 18, 1994). Refer to the Docket ID Number EPA–HQ–SFUND–2008–0586 for supporting documentation regarding this action.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

1. What Is Executive Order 12866?

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3)

materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

2. Is This Proposed Rule Subject to Executive Order 12866 Review?

No. The listing of sites on the NPL does not impose any obligations on any entities. The listing does not set standards or a regulatory regime and imposes no liability or costs. Any liability under CERCLA exists irrespective of whether a site is listed. It has been determined that this action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

1. What Is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9.

2. Does the Paperwork Reduction Act Apply to This Proposed Rule?

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

1. What Is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an 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 governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

2. How Has EPA Complied With the Regulatory Flexibility Act?

This proposed rule listing sites on the NPL, if promulgated, would not impose any obligations on any group, including small entities. This proposed rule, if promulgated, also would establish no standards or requirements that any small entity must meet, and would impose no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking. Thus, this proposed rule, if promulgated, would not impose any requirements on any small entities. For the foregoing reasons, I certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

1. What Is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule where a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small-government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

2. Does UMRA Apply to This Proposed Rule?

No. EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or by the private sector in any one year. This rule will not impose any Federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not

directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

E. Executive Order 13132: Federalism

What Is Executive Order 13132 and Is It Applicable to This Proposed Rule?

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

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

1. What Is Executive Order 13175?

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

2. Does Executive Order 13175 Apply to This Proposed Rule?

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

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

1. What Is Executive Order 13045?

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

2. Does Executive Order 13045 Apply to This Proposed Rule?

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this proposed rule present a disproportionate risk to children.

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

Is This Rule Subject to Executive Order 13211?

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

1. What Is the National Technology Transfer and Advancement Act?

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

2. Does the National Technology Transfer and Advancement Act Apply to This Proposed Rule?

No. This proposed rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: August 27, 2008.

Susan Parker Bodine,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. E8–20389 Filed 9–2–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–1002]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1 percent annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before December 2, 2008.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–1002, to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov*.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

Administrative Procedure Act Statement. This matter is not a rulemaking governed by the Administrative Procedure Act (APA), 5 U.S.C. 553. FEMA publishes flood elevation determinations for notice and comment; however, they are governed by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and do not fall under the APA.

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

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

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

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

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

List of Subjects in 44 CFR Part 67

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

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

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

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in Local Tidal Datum	
				Existing	Modified
Unincorporated Areas of Maui County, Hawaii					
Hawaii	Unincorporated Areas of Maui County.	Kaluaihakoko Stream	Approximately 25 feet upstream of confluence with Pacific Ocean.	None	∧3
			Approximately 500 feet upstream of Piilani Highway.	None	∧138
Hawaii	Unincorporated Areas of Maui County.	Kamaole Gulch	Approximately 90 feet upstream of confluence with Pacific Ocean.	None	∧6
			Approximately 325 feet upstream of Piilani Highway.	None	∧120
Hawaii	Unincorporated Areas of Maui County.	Waikapu Stream	Approximately 255 feet downstream of Kuihelani Highway.	None	∧191
			Approximately 1.6 miles upstream of Honoapiilani Highway.	None	∧781

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Local Tidal Datum.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Maui County

Maps are available for inspection at Maui County Planning Department, 250 South High Street, 2nd Floor, Wailuku, HI.

City of Norfolk, Virginia					
Virginia	City of Norfolk	Chesapeake Bay	Approximately 320 feet north of the intersection of Ocean Avenue and 20th Street.	+7.6	+9.1
Virginia	City of Norfolk	Eastern Branch Elizabeth River.	Approximately 500 feet southwest of Atlantic Street and Waterfront Avenue.	+8.1	+9.1
Virginia	City of Norfolk	Elizabeth River	Approximately 1650 feet west of the intersection of Redgate Avenue and Norfolk Southern Railroad Yard Access Road.	+7.6	+9.1
			Approximately at the waterfront edge of the Norfolk and Southern Railyard.	+7.6	+9.1

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

ADDRESSES

City of Norfolk

Maps are available for inspection at 400 Granby Street, Norfolk, VA 23510.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
St. Clair County, Illinois, and Incorporated Areas				
Catawba Creek	At confluence with Richland Creek	+497	+493	City of Belleville.
	Approximately 570 feet downstream of Catawba Avenue.	+497	+496	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Douglas Creek	At confluence with Richland Creek	+433	+432	Unincorporated Areas of St. Clair County.
	Approximately 600 feet upstream of confluence with Richland Creek.	+433	+432	
Kaskaskia River	At County Boundary with Randolph County	+395	+392	Unincorporated Areas of St. Clair County, Village of New Athens.
	Approximately 8,000 feet upstream of Illinois Central Railroad.	+395	+394	
Little Silver Creek	At confluence with Silver Creek	+429	+428	Unincorporated Areas of St. Clair County.
	Approximately 7,900 feet upstream of Interstate Highway 62 Westbound.	+432	+431	
Mississippi River	Approximately 7,390 feet downstream of Southern County Boundary with Monroe County.	None	+420	City of Centreville, City of East St. Louis, Unincorporated Areas of St. Clair County, Village of Alorton, Village of Brooklyn, Village of Cahokia, Village of Caseyville, Village of Dupo, Village of East Carondelet, Village of Fairmont City, Village of Sauget, Village of Washington Park.
	Approximately 4,435 feet upstream of Northern County Boundary with Madison County.	None	+429	
Northwest Tributary to Ogles Creek.	At confluence with Unnamed Tributary to Ogles Creek	+534	+531	City of Ofallon.
	Approximately 110 feet upstream of the confluence with Unnamed Tributary to Ogles Creek.	+534	+533	
Prairie Du Pont Diversion Channel.	At confluence with Mississippi River	+423	+422	Unincorporated Areas of St. Clair County.
	Approximately 1,200 feet upstream of confluence with Mississippi River.	+423	+422	
Richland Creek	Approximately 3,000 feet downstream of Schluetter-Germaine Road.	+450	+449	City of Belleville, City of Ofallon, Unincorporated Areas of St. Clair County, Village of Shiloh, Village of Smithton, Village of Swansea.
	Approximately 1,090 feet upstream of North Green Mount Road.	None	+530	
Silver Creek	At confluence with Kaskaskia River	+395	+394	Unincorporated Areas of St. Clair County.
	Approximately 250 feet downstream of Five Forks Road.	+395	+394	
Wolf Branch	At confluence with Richland Creek	+500	+496	Village of Swansea.
	Approximately 30 feet downstream of Morgan Street	+500	+499	

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

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Belleville

Maps are available for inspection at City Hall, Department of Economic Development and Planning, 101 South Illinois Street, Belleville, IL 62220.

City of Centreville

Maps are available for inspection at City Hall, 5800 Bond Avenue, Centreville, IL 62207.

City of East St. Louis

Maps are available for inspection at City Hall, 301 River Park Drive, East St. Louis, IL 62201.

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

City of Ofallon

Maps are available for inspection at City Hall, 255 South Lincoln Street, O'Fallon, IL 62269.

Unincorporated Areas of St. Clair County

Maps are available for inspection at County Courthouse, #10 Public Square, 2nd Floor, Belleville, IL 62220.

Village of Alorton

Maps are available for inspection at Village Hall, 4821 Bond Avenue, Alorton, IL 62207.

Village of Brooklyn

Maps are available for inspection at Village Hall, 312 South Fifth Street, Lovejoy, IL 62059.

Village of Cahokia

Maps are available for inspection at Village of Cahokia Annex Building, Department of Code Enforcement, 201 West Fourth Street, Cahokia, IL 62206.

Village of Caseyville

Maps are available for inspection at Village Hall, 909 South Main Street, Caseyville, IL 62232.

Village of Dupo

Maps are available for inspection at Village Hall, 100 North Second Street, Dupo, IL 62239.

Village of East Carondelet

Maps are available for inspection at Village Hall, 950 State Street, East Carondelet, IL 62240.

Village of Fairmont City

Maps are available for inspection at Village Hall, 2601 North 41st Street, Fairmont City, IL 62201.

Village of New Athens

Maps are available for inspection at Village Hall, 905 Spotsylvania Avenue, New Athens, IL 62264.

Village of Sauget

Maps are available for inspection at Village Hall, 2897 Falling Springs Road, Sauget, IL 62206.

Village of Shiloh

Maps are available for inspection at Village Hall, 1 Park Drive, Shiloh, IL 62269.

Village of Smithton

Maps are available for inspection at Village Hall, 101 South Main Street, Smithton, IL 62285.

Village of Swansea

Maps are available for inspection at Government Center, 1400 North Illinois Street, Swansea, IL 62226.

Village of Washington Park

Maps are available for inspection at Village Hall, 5218 North Park Drive, Washington Park, IL 62204.

Allen County, Kansas, and Incorporated Areas

Coon Creek	Approximately 0.60 mile downstream of Highway 54	+955	+954	City of Iola, Unincorporated Areas of Allen County.
	Approximately 115 feet upstream of North Kentucky Street.	+990	+988	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
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Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Iola

Maps are available for inspection at 2 West Jackson, Iola, KS 66749.

Unincorporated Areas of Allen County

Maps are available for inspection at 1 North Washington, Iola, KS 66749.

Van Buren County, Michigan, and Incorporated Areas

Maple Creek	Approximately 0.4 mile upstream of Ollie Hosier Drive	None	+645	Township of Bangor.
	Approximately 800 feet downstream of 34th Avenue	None	+648	
South Branch Black River	Approximately 900 feet upstream of Kal-Haven Trail	None	+585	City of South Haven.
	Downstream side of 71½ Street	None	+585	

* National Geodetic Vertical Datum.

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

+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of South Haven

Maps are available for inspection at 539 Phoenix Street, South Haven, MI 49090.

Township of Bangor

Maps are available for inspection at 32550 CR 687, Bangor, MI 49013.

Onondaga County, New York, and Incorporated Areas

Harbor Brook	Approximately 300 feet upstream of the confluence with Onondaga Lake.	+371	+372	City of Syracuse, Town of Geddes, Town of Onondaga.
	Approximately 860 feet upstream of State Route 173	+781	+782	
Limestone Creek	Approximately 2,990 feet upstream of North Manlius Road.	+398	+399	Town of Manlius, Village of Fayetteville, Village of Manlius, Village of Minoa.
	Approximately 160 feet upstream of Pompey Center Road.	+724	+725	
Meadow Brook	Confluence with Old Erie Canal Feeder	+431	+429	City of Syracuse, Town of Dewitt.
	Approximately 220 feet downstream of Meadow Brook Drive.	+544	+541	
Ninemile Creek	Approximately 2,150 feet upstream of the confluence with Onondaga Lake.	+372	+371	Town of Geddes, Town of Camillus, Town of Marcellus, Village of Camillus, Village of Marcellus.
	Approximately 350 feet upstream of Otisco Valley Road.	None	+781	
Onondaga Creek	Just upstream of Bear Street	None	+371	City of Syracuse, Town of Onondaga.
	Approximately 1.1 miles upstream of Dorwin Avenue	+432	+431	
Skaneateles Creek	Approximately 1.4 miles downstream of Interstate 90	+387	+385	Town of Elbridge, Town of Skaneateles, Village of Elbridge, Village of Jordan, Village of Skaneateles.
	Approximately 960 feet upstream of Kelley Street	+859	+860	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Syracuse

Maps are available for inspection at City Hall, Syracuse, NY 13202.

Town of Camillus

Maps are available for inspection at 4600 West Genesee Street, Municipal Building, Syracuse, NY 13219.

Town of Dewitt

Maps are available for inspection at Town Hall, 5400 Butternut Drive, East Syracuse, NY 13057.

Town of Elbridge

Maps are available for inspection at Town of Elbridge Municipal Building, Jordan, NY 13080.

Town of Geddes

Maps are available for inspection at Town Hall, 1000 Woods Road, Solvay, NY 13209.

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

Town of Manlius

Maps are available for inspection at 301 Brooklea Drive, Fayetteville, NY 13066.

Town of Marcellus

Maps are available for inspection at Town Hall, 24 East Main Street, Marcellus, NY 13108.

Town of Onondaga

Maps are available for inspection at Town Offices, 4801 West Seneca Turnpike, Syracuse, NY 13215.

Town of Skaneateles

Maps are available for inspection at Town Offices, 24 Jordan Street, Skaneateles, NY 13152.

Village of Camillus

Maps are available for inspection at Village Hall, 37 Main Street, Camillus, NY 13031.

Village of Elbridge

Maps are available for inspection at 210 West Main Street, Elbridge, NY 13060.

Village of Fayetteville

Maps are available for inspection at 425 East Genesee Street, Fayetteville, NY 13066.

Village of Jordan

Maps are available for inspection at 7 Mechanis Street, Jordan, NY 13080.

Village of Manlius

Maps are available for inspection at 1 Arkie Albanese Avenue, Manlius, NY 13104.

Village of Marcellus

Maps are available for inspection at 6 Slocumbe Avenue, Marcellus, NY 13108.

Village of Minoa

Maps are available for inspection at 213 Osborne Street, Minoa, NY 13116.

Village of Skaneateles

Maps are available for inspection at 46 East Genesee Street, Skaneateles, NY 13152.

Caldwell County, North Carolina, and Incorporated Areas

Angley Creek	Approximately 300 feet upstream of the confluence with Gunpowder Creek.	None	+1178	Unincorporated Areas of Caldwell County, City of Lenoir, Town of Hudson.
	Approximately 600 feet upstream of Southeast Starcross Road.	None	+1252	
Gunpowder Creek	At the confluence with Catawba River	None	+936	Unincorporated Areas of Caldwell County, City of Lenoir, Town of Granite Falls, Town of Hudson.
	Approximately 700 feet upstream of Southeast Applegate Court.	None	+1321	
Lower Creek	At the Burke/Caldwell County boundary	None	+1026	Unincorporated Areas of Caldwell County, City of Lenoir, Town of Gamewell.
	Approximately 1,900 feet upstream of Cedar Rock Circle (State Road 1706).	+1130	+1131	
Zacks Fork Branch	At the confluence with Zacks Fork Creek	+1106	+1104	City of Lenoir.
	Approximately 1,350 feet upstream of the confluence with Zacks Fork Creek.	+1106	+1105	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
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Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Lenoir

Maps are available for inspection at Lenoir City Hall, 801 West Avenue Northwest, 3rd Floor, Lenoir, NC.

Town of Gamewell

Maps are available for inspection at Gamewell Town Hall, 2750 Old Morganton Road, Lenoir, NC 28645.

Town of Granite Falls

Maps are available for inspection at Granite Falls Town Hall, 30 Park Square, Granite Falls, NC.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Town of Hudson				
Maps are available for inspection at Hudson Town Hall, 550 Central Street, Hudson, NC.				
Unincorporated Areas of Caldwell County				
Maps are available for inspection at Caldwell County Courthouse, 1051 Harper Avenue, Lenoir, NC.				

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

Dated: August 22, 2008.

David I. Maurstad,

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

[FR Doc. E8–20304 Filed 9–2–08; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 15, 27, and 74

[WT Docket Nos. 08–166, 08–167; FCC 08–188]

Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698–806 MHz Band; Public Interest Spectrum Coalition, Petition for Rulemaking Regarding Low Power Auxiliary Stations, Including Wireless Microphones, and the Digital Television Transition

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this Notice of Proposed Rulemaking and Order (*NPRM*), to facilitate the DTV transition the Commission tentatively concludes to amend its rules to make clear that the operation of low power auxiliary stations within the 700 MHz Band will no longer be permitted after the end of the DTV transition. The Commission also tentatively concludes to prohibit the manufacture, import, sale, offer for sale, or shipment of devices that operate as low power auxiliary stations in the 700 MHz Band. In addition, for those licensees that have obtained authorizations to operate low power auxiliary stations in spectrum that includes the 700 MHz Band beyond the end of the DTV transition, the Commission tentatively concludes that it will modify these licenses so as not to permit such operations in the 700 MHz Band after February 17, 2009. The Commission also seeks comment on issues raised by the Public Interest Spectrum Coalition (PISC) in its informal complaint and petition for rulemaking (PISC petition or petition).

DATES: Interested parties may file comments on or before October 3, 2008, and reply comments on or before October 20, 2008.

ADDRESSES: You may submit comments, identified by WT Docket No. 08–166 and 08–167, 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 the Commission continues 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: Bill Stafford, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau at (202) 418–0563 or *Bill.Stafford@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking and Order in WT Docket Nos. 08–166 and 08–167, FCC 08–188, adopted August 15, 2008, and released on August 21, 2008. This summary should be read with its companion document, the final rule summary published elsewhere in this issue of the **Federal Register**. 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 numbers, WT Docket No. 08–166 and WT Docket No. 08–167. Additionally, the complete item is available on the Federal Communications Commission's Web site at *http://www.fcc.gov*.

Synopsis of the Notice of Proposed Rulemaking

Introduction

The Digital Television Transition and Public Safety Act of 2005 (DTV Act) set a firm deadline for the end of the digital television (DTV) transition of February 17, 2009, at which time the spectrum in the 698–806 MHz band (700 MHz Band), currently occupied by television broadcasters in TV Channels 52–69, will be fully available for public safety as well as commercial wireless services. As the Commission has recognized, it is incumbent on the Commission to take all steps necessary to make this spectrum effectively available both to public safety and commercial licensees at the end of the DTV transition.

1. In this Notice of Proposed Rulemaking and Order (NPRM), the Commission considers broadcast low power auxiliary stations, which have been permitted to operate on TV Channels 52–69 in the 700 MHz Band, as well as in several other bands, on a secondary non-interference basis. The Commission tentatively concludes to amend its rules to make clear that the operation of low power auxiliary stations within the 700 MHz Band will

no longer be permitted after the end of the DTV transition because such operations could cause harmful interference to new public safety and commercial wireless services in the band. The Commission also tentatively concludes to prohibit the manufacture, import, sale, offer for sale, or shipment of devices that operate as low power auxiliary stations in the 700 MHz Band. In addition, for those licensees that have obtained authorizations to operate low power auxiliary stations in spectrum that includes the 700 MHz Band beyond the end of the DTV transition, the Commission tentatively concludes that it will modify these licenses so as not to permit such operations in the 700 MHz Band after February 17, 2009. The Commission also seeks comment on issues raised by the Public Interest Spectrum Coalition (PISC) in its informal complaint and petition for rulemaking (PISC petition or petition).

Background

2. *Broadcast Low Power Auxiliary Service.* The Commission licenses broadcast low power auxiliary stations on various different spectrum bands. Devices that may be authorized as low power auxiliary stations are intended for such uses as wireless microphones, cue and control communications, and synchronization of TV camera signals. Where authorized, these devices currently may operate on a secondary basis in spectrum that, all totaled, comprises more than 400 megahertz. Specifically, devices may be permitted in twelve frequency bands. Seven of these frequency bands encompass all of the VHF and UHF broadcast television spectrum (except for Channel 37). Those bands are: 54–72 MHz; 76–88 MHz; 174–216 MHz; 470–488 MHz; 488–494 MHz (except in Hawaii); 494–608 MHz; and 614–806 MHz. The five other frequency bands are: (1) 26.100–26.480 MHz (spectrum for land mobile, broadcast, maritime, and remote pickup broadcast); (2) 161.625–161.775 MHz (except in Puerto Rico or the Virgin Islands) (spectrum for land mobile and remote pickup broadcast); (3 & 4) 450–451 MHz and 455–456 MHz (spectrum for land mobile and remote pickup broadcast); and (5) 944–952 MHz (spectrum for aural broadcast auxiliary stations, public mobile, and fixed microwave). The 700 MHz Band falls within the 698–806 MHz portion of one these bands, the 614–806 MHz band (Channels 38–69).

3. *Rules relating to operation.* Subpart H of part 74 of the Commission's rules govern ''low power auxiliary stations'' generally. As set forth in section 74.801 of the Commission's rules, devices authorized as low power auxiliary stations are ''intended to transmit over distances of approximately 100 meters.'' Section 74.803 states that low power auxiliary station usage in the UHF–TV spectrum—which comprises Channels 14–69, including spectrum in the 700 MHz Band (Channels 52–69)—is ''secondary to TV broadcasting and land mobile stations * * * and must not cause harmful interference'' to such operations. Section 74.861, which relates to the technical requirements for low power auxiliary stations, provides that the maximum permitted output power for low power auxiliary stations in the 614–806 MHz band is 250 milliwatts. That rule also states that such stations ''shall be operated so that no harmful interference is caused to any other class of station operating in accordance with the Commission's rules and regulations and with the Table of Frequency Allocations.'' In addition, section 2.106, Footnote NG115 of the Table of Frequency Allocations provides that these frequencies may be used for wireless microphones and wireless assist video devices on a non-interference basis, subject to the terms and conditions set forth in part 74.

4. *Entities eligible for licenses.* Under section 74.832, only certain entities may be issued licenses authorizing the use of low power auxiliary stations. In particular, these entities fall within the following categories:

(1) Licensees of AM, FM, TV, or International broadcast stations or low power TV stations;

(2) broadcast network entities;

(3) certain cable television system operators;

(4) motion picture and television program producers as defined in the rules; and

(5) certain entities with specified interests in Broadband Radio Service (BRS) Educational Broadcast Service (EBS) licenses, *i.e.*, BRS licensees (formerly licensees and conditional licensees of stations in the Multipoint Distribution Service and Multi-channel Multipoint Distribution Service), or entities that hold an executed lease agreement with a BRS licensee or conditional licensee or entities that hold an executed lease agreement with an Educational Broadcast Service (formerly Instructional Television Fixed Service) licensee or permittee.

5. *Current licensees authorized to operate in the 700 MHz Band.* Commission records reflect that there are currently 943 active low power auxiliary station licenses. The authorizations for 156 of these licenses include the authority to operate in the 700 MHz Band. While most of these licenses are authorized to operate in bands in addition to the 614–806 MHz band (Channels 38–69), thirty (30) of these 156 licenses are authorized to operate only in that particular band, of which the 700 MHz Band (Channels 52–69) is a part. Of these 30 licenses, 28 are authorized to operate in the entire 614–806 MHz band, and two are authorized to operate only at certain frequencies in the 700 MHz Band. These 30 licenses vary in geographic scope. Two licenses are authorized on a nationwide basis; and one operates on a statewide basis in Illinois. The geographic scopes of two other licenses are not mappable. For the remaining 25 licenses, geographic scope is determined based on specific geographic coordinates using a ''radius around centerpoint'' definition which ranges from 1 kilometer to 322 kilometers.

6. *PISC's Petition.* On July 16, 2008, PISC filed its petition requesting that the Commission address unauthorized use of wireless microphones in the 700 MHz Band. PISC's allegations include that certain manufacturers of wireless microphones authorized for use under part 74, subpart H have violated the Commission's rules by marketing and selling equipment limited by Commission rule to certain classes of users to the general public; marketing and selling equipment for purposes that violate the Commission's rules; and deceiving the public as to the requirement for a Commission license and the limitations imposed by the Commission on the use of the devices. PISC argues that a number of steps, which are outlined in its petition, should be taken to prevent interference to public safety and commercial systems that will operate in the bands currently occupied by television channels 52–69, including the creation of a new ''General Wireless Microphone Service'' (GWMS).

7. *DTV Transition.* In connection with the Congressionally mandated transition from analog television to DTV, the 700 MHz Band is being made available on a primary basis for new public safety and other wireless services once it is relinquished by broadcasters on TV Channels 52–69. As the Commission has noted, because DTV transmissions are more spectrally efficient than analog transmissions, only spectrum occupied currently by Channels 2–51 (*i.e.*, the ''core'' TV broadcast spectrum) will be needed for broadcast television service after the DTV transition is complete on February 17, 2009. The Commission has stated that ''[i]t is incumbent on the Commission to take all the steps necessary to make this [relinquished] spectrum effectively available to both

public safety as well as commercial licensees as of the end of the DTV transition.'' Accordingly, on February 17, 2009, all analog television service by full power TV stations will terminate and temporary DTV assignments on Channels 52–69 will be relocated into the core TV channels so that new wireless licensees will be able to provide unencumbered services in the 698–806 MHz Band.

8. Prior to the 2005 DTV Act, the Commission reallocated the 700 MHz Band in separate proceedings, one involving the 48 megahertz covering TV Channels 52–59 (Lower 700 MHz Band) and the other governing the 60 megahertz covering TV Channels 60–69 (Upper 700 MHz Band). In the last several years, the Commission has also issued several orders addressing both the lower and upper portions of the 700 MHz Band, and has issued licenses for the provision of commercial and public safety services in the 700 MHz Band. Recently, the Commission auctioned additional licenses for commercial services in the 700 MHz Band, and issued a nationwide license for the broadband portion of the public safety spectrum in this band. In addition, a number of public safety entities already have authority to operate in the narrowband public safety spectrum.

9. The Commission and various affected parties have contemplated that low power broadcast auxiliary devices would lose their secondary status, and would need to vacate the band, upon completion of the DTV transition. For instance, when the Commission adopted service rules in 2001 for the Lower 700 MHz Band (698–746 MHz), it declined to grant a request filed by the Society of Broadcast Engineers, Inc. (SBE) that the Commission ''afford continued secondary status to part 74 low power broadcast auxiliary devices (such as wireless microphones) operating in the Lower 700 MHz Band, and to establish a new service in part 95 of the Commission's Rules to accommodate their use.'' In its comments filed in that proceeding, SBE claimed that the loss of ''many UHF TV channels to DTV stations and the anticipated transfer of Channels 60 through 69 to the Land Mobile services will push the majority of the installed base of wireless microphones, IFB [Interrupted Fold Back], and cues and control signal uses of vacant UHF TV channels right off the bus.'' The Commission stated that SBE's request was outside the scope of that proceeding, but noted that ''insofar that the Lower 700 MHz Band will host extensive broadcast use throughout the DTV transition, it is unlikely that new licensees will rapidly occupy the band to the extent that users of the low power broadcast auxiliary devices of the type SBE discusses will have to immediately cease all operation.'' Thus, both SBE and the Commission contemplated that low power broadcast auxiliary devices would be losing their secondary status and would have to vacate the band upon completion of the DTV transition in a particular local market. In addition, the Commission notes that some manufacturers of wireless microphones, including Shure Incorporated (Shure), have indicated on their Web sites that after the end of the DTV transition, frequencies in the 700 MHz Band will no longer be available for wireless microphone use.

10. In 2002, in another proceeding touching on the DTV transition, the Commission adopted an order expressly excluding from the 700 MHz Band another type of part 74 subpart H low power auxiliary station device—wireless assist video devices (WAVDs)—in recognition of reallocation of TV Channels 52–69 to wireless services, including public safety services. In that order, the Commission stated that ''WAVDs will not be allowed to use * * * [Channels 52–69] in the UHF–TV band due to a recent spectrum reallocation of those channels to uses other than broadcasting.'' In addition, the Commission notes that in the TV ''White Spaces'' proceeding, where the Commission is considering allowing the introduction of new low power, unlicensed devices in the broadcast television spectrum, the Commission in 2006 determined that such low power devices will not be permitted to operate on TV Channels 52–69. In making this determination, the Commission stated that this spectrum ''ha[s] been reallocated for services other than broadcast television and will no longer be part of the TV bands after the transition.'' Despite its intent to make the 700 MHz Band spectrum fully available for public safety and commercial wireless services at the end of the DTV transition, the Commission has not revisited its low power auxiliary stations rules expressly to revise the part 2 and part 74 rules for low power auxiliary stations to prohibit their operation in the 700 MHz Band after the end of the DTV transition.

Notice of Proposed Rulemaking

11. In this NPRM, the Commission tentatively concludes to revise its rules to prevent operation of low power auxiliary stations in the 700 MHz Band, and thus avoid potential disruption to new public safety and other services in that Band after the DTV transition. The Commission also tentatively concludes to prohibit the manufacture, import, sale, offer for sale, or shipment of devices that operate as low power auxiliary stations in the 700 MHz Band. In addition, the Commission seeks comment on the PISC petition.

A. Facilitating the DTV Transition

12. As discussed above, the Commission and various affected parties, such as SBE and Shure, have contemplated that low power broadcast auxiliary devices would lose their secondary status, and would need to vacate the band, upon completion of the DTV transition. The Commission therefore tentatively concludes to revise its rules to make clear that low power auxiliary stations authorized under part 74 of its rules—including wireless microphones—will not be permitted to operate in the 700 MHz Band after the DTV transition. With these revisions, the Commission would be conforming its rules to the Commission's expressed intent to ensure that this spectrum, currently occupied by TV Channels 52–69, will be fully available for public safety as well as commercial wireless services at the end of the DTV transition on February 17, 2009. The Commission is concerned about the potential for harmful interference from low power auxiliary devices to 700 MHz Band public safety and commercial wireless operations.

13. The Commission also notes that its tentative conclusion to amend its rules so as not to permit low power auxiliary devices in the 700 MHz Band after the end of the DTV transition is consistent with the rules adopted in 2002 to authorize WAVDs, which prohibited their use of the 700 MHz Band because of the DTV transition. As described above, the Commission determined that WAVDs were not permitted to operate in the 700 MHz Band, recognizing that this spectrum has been allocated to public safety and commercial operations. The Commission's tentative conclusion is also consistent with its decision to exclude the operation of unlicensed devices from the 700 MHz Band in the TV white spaces proceeding.

14. To the extent existing licensees have obtained authorizations to operate low power auxiliary stations in spectrum that includes the 700 MHz Band beyond the end of the DTV transition, the Commission tentatively concludes that it should use its statutory authority under section 316 of the Act to modify their licenses so as not to permit operations on the 700 MHz Band past February 17, 2009. Under this proposal, individual licenses will continue to include authorization to use

all frequencies currently included in those licenses other than the 700 MHz Band through the end of their existing term, and licensees can seek to amend their licenses to include additional frequencies permitted under subpart H if they wish. The Commission makes this tentative conclusion because the Commission is concerned that continued use of this spectrum by existing licensees of low power auxiliary stations may be disruptive to new public safety and other wireless operations in the 700 MHz Band, and because of the ready availability of other means that those licensees have under its rules for obtaining access to various other spectrum frequencies in which to operate low power auxiliary stations. The Commission seeks comment on this tentative conclusion. Commenters advocating that these license terms should be reduced so as to terminate at some other date, *e.g.*, one year after February 17, 2009, or not reduced at all, should fully support how operations that would continue beyond February 17, 2009 would be in the public interest and not harmful to public safety and commercial users.

15. The Commission also tentatively concludes to prohibit the manufacture, import, sale, offer for sale, or shipment of devices that operate as low power auxiliary stations in the 700 MHz Band. Further, the Commission tentatively concludes that this prohibition, if adopted in this proceeding, will take effect on the date that the revised rules take effect. The Commission notes that the Communications Act of 1934, as amended, authorizes the Commission ''consistent with the public interest, convenience, and necessity, [to] make reasonable regulations * * * governing the interference potential of devices which in their operation are capable of emitting radio frequency energy by radiation, conduction, or other means in sufficient degree to cause harmful interference to radio communications'' and these regulations ''shall be applicable to the manufacture, import, sale, offer for sale, or shipment of such devices * * *, and to the use of such devices.'' The Act further provides that ''[n]o person shall manufacture, import, sell, offer for sale, or ship devices * * *, or use devices, which fail to comply with regulations promulgated pursuant to this section.'' The Commission believes that this proposed prohibition will help facilitate the DTV transition by helping address possible concerns about significant unauthorized operation of wireless microphones in the 700 MHz Band, and therefore help minimize the likelihood that additional unauthorized use would occur after the end of the DTV transition. The Commission seeks comment on its tentative conclusions to prohibit the manufacture, import, sale, offer for sale, or shipment of low power auxiliary station devices that operate in the 700 MHz Band, and to have the prohibition take effect on the effective date of the revised rules.

16. In reaching this tentative conclusion, the Commission notes that even if low power auxiliary stations are no longer authorized to operate in the 700 MHz Band at the end of the DTV transition, such stations will continue to be permitted access to more than 300 megahertz of spectrum in which low power auxiliary stations may operate under the Commission's rules. The Commission tentatively concludes that, given the amount of spectrum available in these other bands, prohibiting the use of low power auxiliary stations from the 700 MHz band will have minimal impact on such operations. The Commission seeks comment on this conclusion.

17. Finally, the Commission seeks comment on any steps that the Commission should take—if it does not adopt a version of its proposals set out above—to ensure that low power auxiliary stations do not interfere with public safety and commercial operations in the 700 MHz Band after the end of the DTV transition.

B. PISC's Informal Complaint and Petition for Rulemaking

18. In its petition, PISC addresses a number of issues concerning the operation of low power auxiliary stations, and wireless microphones in particular, in the context of the 700 MHz Band. PISC alleges that certain manufacturers of wireless microphones authorized for use under part 74, subpart H have violated the Commission's rules by marketing and selling equipment limited by Commission rule to certain classes of users to the general public; marketing and selling equipment for purposes that violate the Commission's rules; and deceiving the public as to the requirement for a Commission license and the limitations imposed by the Commission on the use of the devices. PISC also claims that unauthorized use by ineligible users of wireless microphones with respect to Channels 52–69 has become widespread and that because of the risk to new wireless services from unauthorized wireless microphone use, and because manufacturers have demonstrated an intent to market equipment authorized for limited use to the general public, the Commission should move expeditiously to prohibit the manufacture and sale of wireless microphones that operate on Channels 52–69.

19. Specifically, PISC requests that the Commission: (1) ''[b]egin an investigation against Shure, Inc., and the other manufacturers'' listed in its informal complaint, ''for willfully and knowingly marketing and selling wireless microphones to unauthorized users for ineligible purposes in violation of part 74, subpart H, and for engaging in deceptive advertising practices designed to persuade ineligible users such as houses of worship, theaters, corporate event venues, and members of the general public'' that they could ''legally purchase and operate wireless microphones operating on vacant broadcast UHF Channels without a license and for purposes prohibited by the Commission;'' (2) ''[g]rant a general amnesty to all unauthorized users of wireless microphones deceived by the illegal and deceptive marketing of manufacturers, permit use of the illegal equipment on a going forward basis until the Commission authorizes'' the new GWMS proposed by PISC, and require those manufacturers that ''engaged in illegal marketing to migrate the unauthorized users of part 74, subpart H equipment to the new GWMS [proposed by PISC] by replacing equipment authorized for part 74, subpart H; (3) ''[i]mmediately reclassify all licensed wireless microphone systems operating pursuant to part 74, subpart H as secondary'' to all commercial and public safety wireless systems ''authorized to operate on television Channels 52–69 following the shut off of analog television transmission;'' (4) ''[o]rder that manufacture, sale, and advertisement for sale of wireless microphone systems operating on channels 52–69 cease immediately;'' and (5) ''[c]reate a new 'General Wireless Microphone Service' (GWMS) licensed by rule pursuant to section 307(e) to operate on vacant broadcast UHF channels below Channel 52 on a secondary basis to broadcast licensees and individually licensed wireless microphone systems,'' and authorized ''on a primary basis to operate on the 2020–[20]25 Band currently authorized for broadcast auxiliary service (BAS) and under consideration * * * in Docket Nos. WT 07–195, WT 04–356 (AWS–2/AWS–3 Proceeding).''

20. The Commission seeks comment on the various elements found in PISC's petition, particularly to the extent that the Commission is not addressing those elements elsewhere in this NPRM. The Commission notes that the

Commission's Enforcement Bureau has initiated an investigation relating to the marketing practices of various manufacturers of wireless microphones.

Procedural Matters

A. Comment Filing Procedures

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 the Commission continues 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). To request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CARTS, etc.) contact the FCC by e-mail: *FCC504@fcc.gov*; phone: 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 notice of proposed rulemaking 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 numbers WT Docket No. 08–166 and WT Docket No. 08–167. 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*.

B. Other Procedural Matters

1. Ex Parte Requirements

This proceeding has been designated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules.[1] 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.[2] More than a one- or two-sentence description of the views and arguments presented is generally required.[3]

2. Initial Paperwork Reduction Act of 1995 Analysis

21. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

3. Initial Regulatory Flexibility Analysis

22. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[4] the Federal Communications Commission (Commission) has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules considered in this Notice of Proposed Rulemaking (*NPRM*), WT Docket No. 08–166 and WT Docket No. 08–167.[5] Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided on page one of this *NPRM*. The Commission will send a copy of this *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[6] In addition, this *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.[7]

23. Although section 213 of the Consolidated Appropriations Act 2000 provides that the RFA shall not apply to the rules and competitive bidding procedures for frequencies in the 746–806 MHz Band,[8] the Commission

[1] *See* 47 CFR 1.1200(a), 1.1206.

[2] *See* Commission Emphasizes the Public's Responsibilities in Permit-But-Disclose Proceedings, *Public Notice*, 15 FCC Rcd 19945 (2000).

[3] *See* 47 CFR 1.1206(b)(2). Other rules pertaining to oral and written presentations are also set forth in section 1.1206(b). *See* 47 CFR 1.1206(b).

[4] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. 104–121, Title II, 110 Stat. 857 (1996).

[5] Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698–806 MHz Band, WT Docket No. 08–166, Public Interest Spectrum Coalition, Petition for Rulemaking Regarding Low Power Auxiliary Stations, Including Wireless Microphones, and the Digital Television Transition, WT Docket No. 08–167.

[6] *See* 5 U.S.C. 603(a).

[7] *Id*.

[8] In particular, this exemption extends to the requirements imposed by Chapter 6 of Title 5, United States Code, Section 3 of the Small Business Act (15 U.S.C. 632) and Section 3507 and 3512 of

believes that it would serve the public interest to analyze the possible significant economic impact of the proposed policy and rule changes in this band on small entities. Accordingly, this IRFA contains an analysis of this impact in connection with all spectrum that falls within the scope of this *NPRM*, including spectrum in the 746–806 MHz Band.

A. Need for, and Objectives of, the Proposed Rules

24. As noted above, the DTV Act set a firm date by which the spectrum in the 700 MHz Band (698–806 MHz), currently occupied by television broadcasters in TV Channels 52–69, must be vacated to allow for use by public safety and commercial wireless services. This *NPRM* proposes rules intended to ease the DTV transition by ensuring that the 700 MHz Band is fully available for public safety and commercial wireless services as of February 17, 2009, by limiting potential interference in the band. In this *NPRM*, the Commission seeks comment on its tentative conclusion to amend its rules to make clear that the operation of low power auxiliary stations within the 700 MHz Band will no longer be permitted after the end of the DTV transition because such operations could cause harmful interference to new wireless services in the band, particularly public safety operations.[9] The Commission also tentatively concludes to prohibit the manufacture, import, sale, offer for sale, or shipment of devices that operate as low power auxiliary stations in the 700 MHz Band after the end of the DTV transition.[10] In addition, for those licensees that have obtained authorizations to operate low power auxiliary stations in spectrum that includes the 700 MHz Band beyond the end of the DTV transition, the Commission tentatively concludes that it will modify these licenses so as not to permit such operations in the 700 MHz Band after February 17, 2009.[11]

B. Legal Basis

25. The potential actions about which comment is sought in this *NPRM* would be authorized pursuant to the authority contained in sections 1, 2, 4(i), 4(j), 301, 302, 303, 304, 307, 308, 309, 316, 332, 336, and 337 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 301, 302a, 303, 304, 307, 308, 309, 316, 332, 336, and 337.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

26. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the proposed rules, if adopted.[12] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''[13] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[14] A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[15]

27. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.[16] A ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.''[17] Nationwide, as of 2002, there were approximately 1.6 million small organizations.[18] The term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.''[19] Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.[20] The Commission estimates that, of this total, 84,377 entities were ''small governmental jurisdictions.''[21] Thus, the Commission estimates that most governmental jurisdictions are small.

28. In the *NPRM*, the Commission seeks comment on the tentative conclusion that low power auxiliary stations authorized under part 74 of the Commission's rules—including wireless microphones—will not be permitted to operate in the 700 MHz Band after the DTV transition. The *NPRM* then seeks comment on whether to prohibit the manufacture, import, sale, offer for sale, or shipment of devices that operate as low power auxiliary stations in the 700 MHz Band after the end of the DTV transition. Under section 74.832, only certain entities may be issued licenses authorizing the use of low power auxiliary stations. In particular, these entities fall within the following categories: (1) Licensees of AM, FM, TV, or International broadcast stations or low power TV stations; (2) broadcast network entities; (3) certain cable television system operators; (4) motion picture and television program producers as defined in the rules; and (5) certain entities with specified interests in Broadband Radio Service (BRS) Educational Broadcast Service (EBS) licenses, *i.e.*, BRS licensees (formerly licensees and conditional licensees of stations in the Multipoint Distribution Service and Multi-channel Multipoint Distribution Service), or entities that hold an executed lease agreement with a BRS licensee or conditional licensee or entities that hold an executed lease agreement with an Educational Broadcast Service (formerly Instructional Television Fixed Service)[22] licensee or permittee.[23]

29. In the *NPRM*, the Commission also seeks comment on issues raised by the Public Interest Spectrum Coalition (PISC) in an informal complaint and petition for rulemaking (PISC petition or petition).[24] PISC's allegations include

Title 44, United States Code. Consolidated Appropriations Act 2000, Pub. L. 106–113, 113 Stat. 2502, Appendix E, Sec. 213(a)(4)(A)–(B); *see* 145 Cong. Rec. H12493–94 (Nov. 17, 1999); 47 U.S.C.A. 337 note at section 213(a)(4)(A)–(B).

[9] *See NPRM* at *para.* 2.

[10] *Id.*

[11] *Id.*

[12] 5 U.S.C. 603(b)(3).

[13] 5 U.S.C. 601(6).

[14] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small-business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[15] 15 U.S.C. 632.

[16] *See* SBA, Programs and Services, SBA Pamphlet No. CO–0028, at page 40 (July 2002).

[17] 5 U.S.C. 601(4).

[18] Independent Sector, The New Nonprofit Almanac & Desk Reference (2002).

[19] 5 U.S.C. 601(5).

[20] U.S. Census Bureau, Statistical Abstract of the United States: 2006, Section 8, page 272, Table 415.

[21] The Commission assumes that the villages, school districts, and special districts are small, and total 48,558. *See* U.S. Census Bureau, Statistical Abstract of the United States: 2006, section 8, page 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

[22] In July 2004, the Commission renamed Multipoint Distribution Service as the Broadband Radio Service and renamed Instructional Television Fixed Service as the Educational Broadcast Service. *See* Amendment of parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 14165, 14169 para. 6 (2004).

[23] *See* 47 CFR 74.832(a)(1)–(6).

[24] *See* Complaint of Public Interest Spectrum Coalition (PISC) Against Shure, Inc., Nady Systems, Inc., VocoPro, Audio2000, Sennheiser Electronic Corporation, Audix Microphones, Electro Voice, Hisonic International, Inc., Pyle Audio, et al.; Petition To Create a General Wireless Microphone

Continued

that certain manufacturers of wireless microphones authorized for use under part 74, subpart H have violated the Commission's rules by marketing and selling equipment limited by Commission rule to certain classes of users to the general public; marketing and selling equipment for purposes that violate the Commission's rules; and deceiving the public as to the requirement for a Commission license and the limitations imposed by the Commission on the use of the devices.[25] PISC argues that a number of steps should be taken to prevent interference to public safety and commercial systems that will operate in the bands currently occupied by television channels 52–69, including the creation of a new ''General Wireless Microphone Service'' (GWMS). [26]

30. *Radio Stations.* This Economic Census category ''comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources.'' [27] The SBA has established a small business size standard for this category, which is: Such firms having $6.5 million or less in annual receipts.[28] According to Commission staff review of BIA Publications, Inc.'s *Master Access Radio Analyzer Database* on March 31, 2005, about 10,840 (95%) of 11,410 commercial radio stations had revenues of $6 million or less. Therefore, the majority of such entities are small entities.

31. The Commission notes, however, that in assessing whether a business concern qualifies as small under the above size standard, business affiliations must be included. [29] In addition, to be determined to be a ''small business,'' the entity may not be dominant in its field of operation.[30] The Commission notes that it is difficult at times to assess these criteria in the context of media entities, and the Commission's estimate of small businesses may therefore be over-inclusive.

32. *Television Broadcasting.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.'' [31] The SBA has created a small business size standard for Television Broadcasting entities, which is: Such firms having $13 million or less in annual receipts.[32] The Commission has estimated the number of licensed commercial television stations to be 1,379.[33] In addition, according to Commission staff review of the BIA Publications, Inc., Master Access Television Analyzer Database (BIA) on March 30, 2007, about 986 of an estimated 1,374 commercial television stations (or approximately 72 percent) had revenues of $13 million or less.[34] The Commission therefore estimates that the majority of commercial television broadcasters are small entities.

33. The Commission notes, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations [35] must be included. The Commission's estimate, therefore, likely overstates the number of small entities that might be affected by the Commission's action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

34. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 380.[36] These stations are non-profit, and therefore considered to be small entities.[37] There are also 2,295 low power television stations (LPTV).[38] Given the nature of this service, the Commission will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

35. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' [39] The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services the Commission must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: All such firms having $13.5 million or less in annual receipts.[40] According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire

Service (GWMS), *Informal Complaint and Petition for Rulemaking*, (filed July 16, 2008) (PISC Petition). The Public Interest Spectrum Coalition Consists of: The CUWiN Foundation (CUWIN), Consumer Federation of America (CFA), Consumers Union (CU), EDUCAUSE, Free Press (FP), Media Access Project (MAP), the National Hispanic Media Coalition (NHMC), the New America Foundation (NAF), the Open Source Wireless Coalition (OSWC), Public Knowledge (PK), and U.S. PIRG.

[25] *See* PISC petition at 21–22.

[26] *See* PISC petition at i–ii.

[27] U.S. Census Bureau, 2002 NAICS Definitions, ''515112 Radio Stations''; *http://www.census.gov/epcd/naics02/def/NDEF515.HTM.* A separate census category for ''Radio Networks'' ''comprises establishments primarily engaged in assembling and transmitting aural programming to their affiliates or subscribers via over-the-air broadcasts, cable, or satellite. The programming covers a wide variety of material, such as news services, religious programming, weather, sports, or music.'' *Id.* (NAICS code 5155111).

[28] 13 CFR 121.201, NAICS code 515112.

[29] ''Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists.'' 13 CFR 121.103(a)(1) (an SBA regulation).

[30] 13 CFR 121.102(b) (an SBA regulation).

[31] U.S. Census Bureau, 2002 NAICS Definitions, ''515120 Television Broadcasting'' (partial definition); *http://www.census.gov/epcd/naics02/def/NDEF515.HTM.*

[32] 13 CFR 121.201, NAICS code 515120.

[33] *See FCC News Release*, ''Broadcast Station Totals as of December 31, 2007,'' dated March 18, 2008; *http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC-280836A1.pdf.*

[34] The Commission recognizes that BIA's estimate differs slightly from the FCC total given *supra.*

[35] ''[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both.'' 13 CFR 21.103(a)(1).

[36] *See FCC News Release*, ''Broadcast Station Totals as of December 31, 2007,'' dated March 18, 2008; *http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC-280836A1.pdf.*

[37] *See generally* 5 U.S.C. 601(4), (6).

[38] *See FCC News Release*, ''Broadcast Station Totals as of December 31, 2007,'' dated March 18, 2008; *http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC-280836A1.pdf.*

[39] U.S. Census Bureau, 2007 NAICS Definitions, ''517110 Wired Telecommunications Carriers'' (partial definition); *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[40] 13 CFR 121.201, NAICS code 517110.

year.[41] Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million.[42] Thus, the majority of these firms can be considered small.

36. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide.[43] Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.[44] In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers.[45] Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers.[46] Thus, under this second size standard, most cable systems are small.

37. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.''[47] The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[48] Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.[49] The Commission notes that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million,[50] and therefore the Commission is unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

38. *Motion Picture and Video Producers.* This economic census category comprises ''establishments primarily engaged in producing, or producing and distributing motion pictures, videos, television programs, or television commercials.''[51] The SBA has developed a small business size standard for firms within this category, which is: Firms with $27 million or less in annual receipts.[52] According to Census Bureau data for 2002, there were 7,772 firms in this category that operated for the entire year.[53] Of this total, 7,685 firms had annual receipts of under $25 million and 45 firms had annual receipts of $25 million to $49,999,999.[54] Thus, under this category and associated small business size standard, the majority of firms can be considered small.

39. *Broadband Radio Service (formerly Multipoint Distribution Service) and Educational Broadband Service (formerly Instructional Television Fixed Service).* Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as ''wireless cable,'' transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS).[55] In its *BRS/EBS Report and Order* in WT Docket No. 03–66, the Commission comprehensively reviewed its policies and rules relating to the ITFS and MDS services, and replaced the MDS with the Broadband Radio Service and ITFS with the Educational Broadband Service in a new band plan at 2495–2690 MHz.[56] In connection with the 1996 MDS auction, the Commission defined ''small business'' as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years.[57] The SBA has approved of this standard.[58]

40. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which is: All such firms having $13.5 million or less in annual receipts.[59] According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.[60] Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million.[61] Thus, under this size standard, the majority of firms can be considered small.

41. *Low Power Auxiliary Device Manufacturers: Radio and Television*

[41] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

[42] *Id.* An additional 61 firms had annual receipts of $25 million or more.

[43] 47 CFR 76.901(e). The Commission determined that this size standard equates approximately to a size standard of $100 million or less in annual revenues. Implementation of Sections of the 1992 Cable Act: Rate Regulation, *Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd 7393, 7408 (1995).

[44] These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, ''Top 25 Cable/Satellite Operators,'' pages A–8 & C–2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, ''Ownership of Cable Systems in the United States,'' pages D–1805 to D–1857.

[45] 47 CFR 76.901(c).

[46] Warren Communications News, Television & Cable Factbook 2006, ''U.S. Cable Systems by Subscriber Size,'' page F–2 (data current as of Oct. 2005). The data do not include 718 systems for which classifying data were not available.

[47] 47 U.S.C. 543(m)(2); *see* 47 CFR 76.901(f) & nn. 1–3.

[48] 47 CFR 76.901(f); *see* Public Notice, *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, DA 01–158 (Cable Services Bureau, Jan. 24, 2001).

[49] These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, ''Top 25 Cable/Satellite Operators,'' pages A–8 & C–2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, ''Ownership of Cable Systems in the United States,'' pages D–1805 to D–1857.

[50] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.901(f) of the Commission's rules. *See* 47 CFR 76.909(b).

[51] U.S. Census Bureau, 2007 NAICS Definitions, ''512110 Motion Picture and Video Production''; *http://www.census.gov/naics/2007/def/ND512110.HTM#N512110* (this definition is unchanged from the 2002 NAICS definition).

[52] 13 CFR 121.201, NAICS code 512110.

[53] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 4, NAICS code 512110 (issued Nov. 2005).

[54] *Id.* An additional 42 firms had annual receipts of $50 million or more.

[55] Amendment of parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, MM Docket No. 94–131 and PP Docket No. 93–253, *Report and Order*, 10 FCC Rcd 9589, 9593 para. 7 (1995) (*MDS Auction R&O*).

[56] *See* Amendment of parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 03–145 (rel. July 29, 2004) (*BRS/EBS Report and Order*). As the Commission noted in the *Further Notice,* there are unique policies associated with ITFS licensees' educational purposes, and the services have already developed their own approach to excess capacity leasing. *See Further Notice* at paras. 307–08.

[57] 47 CFR 21.961(b)(1).

[58] *See* Letter to Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Bureau, from Gary Jackson, Assistant Administrator for Size Standards, Small Business Administration, dated March 20, 2003 (noting approval of $40 million size standard for MDS auction).

[59] 13 CFR 121.201, NAICS code 517510.

[60] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

[61] *Id.* An additional 61 firms had annual receipts of $25 million or more.

Broadcasting and Wireless Communications Equipment Manufacturing. The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' [62] The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: All such firms having 750 or fewer employees.[63] According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year.[64] Of this total, 1,010 had employment of less than 500, and an additional 13 had employment of 500 to 999.[65] Thus, under this size standard, the majority of firms can be considered small.

42. *Low Power Auxiliary Device Manufacturers: Other Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment).'' [66] The SBA has developed a small business size standard for Other Communications Equipment Manufacturing, which is: All such firms having 750 or fewer employees.[67] According to Census Bureau data for 2002, there were a total of 503 establishments in this category that operated for the entire year.[68] Of this total, 493 had employment below 500, and an additional 7 had employment of 500 to 999.[69] Thus, under this size standard, the majority of firms can be considered small.

43. *Radio, Television, and Other Electronics Stores.* The Census Bureau defines this economic census category as follows: ''This U.S. industry comprises: (1) Establishments known as consumer electronics stores primarily engaged in retailing a general line of new consumer-type electronic products; (2) establishments specializing in retailing a single line of consumer-type electronic products (except computers); or (3) establishments primarily engaged in retailing these new electronic products in combination with repair services.'' [70] The SBA has developed a small business size standard for Radio, Television, and Other Electronics Stores, which is: All such firms having $8 million or less in annual receipts.[71] According to Census Bureau data for 2002, there were 10,380 firms in this category that operated for the entire year.[72] Of this total, 10,080 firms had annual sales of under $5 million, and 177 firms had sales of $5 million or more but less than $10 million.[73] Thus, the majority of firms in this category can be considered small.

44. When identifying small entities that could be affected by the Commission's new rules, this IRFA provides information describing the number of small entities that currently hold low power auxiliary station licenses, as well as estimates of the number of small entities that currently manufacture low power auxiliary devices. In order to assist the Commission in analyzing the total number of potentially affected small entities, the Commission requests commenters to estimate the number of small entities that may be affected by any rule changes that might result from this *NPRM.*

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

45. Under the proposals contained in this *NPRM* there would be no new reporting or recordkeeping requirements placed on small entities. The Commission tentatively concludes to amend its rules to make clear that the operation of low power auxiliary stations within the 700 MHz Band will no longer be permitted after the end of the DTV transition because such operations could cause harmful interference to new wireless services in the band, particularly public safety operations. To the extent there are licensees that have obtained authorizations to operate low power auxiliary stations in spectrum that includes the 700 MHz Band beyond the end of the DTV transition, the Commission tentatively concludes that it will modify these licenses so as not to permit such operations in the 700 MHz Band after February 17, 2009.

46. The *NPRM* also seeks comment on whether to prohibit the manufacture, import, sale, offer for sale, or shipment of devices that operate as low power auxiliary stations in the 700 MHz Band after the end of the DTV transition. If this proposal is adopted, manufacturers producing low power auxiliary devices would be required to ensure that such devices would be unable to operate within the 700 MHz band.

47. To the extent the Commission's proposed revisions to its rules do not reflect the best approach to limit interference within the 700 MHz Band, the *NPRM* seeks comment on the possibility of making appropriate adjustments to various prohibitions that will better serve the public interest.

[62] U.S. Census Bureau, 2002 NAICS Definitions, ''334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing''; *http://www.census.gov/epcd/naics02/def/NDEF334.HTM#N3342.*

[63] 13 CFR 121.201, NAICS code 334220.

[64] U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334220 (released May 26, 2005); *http://factfinder.census.gov.* The number of ''establishments'' is a less helpful indicator of small business prevalence in this context than would be the number of ''firms'' or ''companies,'' because the latter takes into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census breaks out data for firms or companies only to give the total number of such entities for 2002, which was 929.

[65] *Id.* An additional 18 establishments had employment of 1,000 or more.

[66] U.S. Census Bureau, 2002 NAICS Definitions, ''334290 Other Communications Equipment Manufacturing''; *http://www.census.gov/epcd/naics02/def/NDEF334.HTM#N3342.*

[67] 13 CFR 121.201, NAICS code 334290.

[68] U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334290 (released May 26, 2005); *http://factfinder.census.gov.* The number of ''establishments'' is a less helpful indicator of small business prevalence in this context than would be the number of ''firms'' or ''companies,'' because the latter takes into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census breaks out data for firms or companies only to give the total number of such entities for 2002, which was 471.

[69] *Id.* An additional 3 establishments had employment of 1,000 or more.

[70] U.S. Census Bureau, 2002 NAICS Definitions, ''443112 Radio, Television, and Other Electronics Stores''; *http://www.census.gov/epcd/naics02/def/NDEF443.HTM.*

[71] 13 CFR 121.201, NAICS code 443112.

[72] U.S. Census Bureau, 2002 Economic Census, Industry Series: Retail Trade, Table 4, Sales Size of Firms for the United States: 2002, NAICS code 443112 (issued November 2005).

[73] *Id.* An additional 123 firms had annual sales of $10 million or more. As a measure of small business prevalence, the data on annual sales are roughly equivalent to what one would expect from data on annual receipts.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

48. The RFA requires an agency to describe any significant, specifically small business alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) and exemption from coverage of the rule, or any part thereof, for small entities.'' [74]

49. The *NPRM* tentatively concludes to amend the Commission's rules to make clear that the operation of low power auxiliary stations within the 700 MHz Band will no longer be permitted after the end of the DTV transition because such operations could cause harmful interference to new wireless services in the band, particularly public safety operations. Although the *NPRM* tentatively concludes that the Commission will modify licenses so as not to permit operations past February 17, 2009, it makes this tentative conclusion because the Commission is concerned that continued use of this spectrum by existing licensees of low power auxiliary stations may be disruptive to new public safety and other wireless operations in the 700 MHz Band, and because of the ready availability of other means that those licensees have under the Commission's rules for obtaining access to various other spectrum frequencies in which to operate low power auxiliary stations. Moreover, such stations will continue to be permitted access to more than 300 megahertz of spectrum.[75]

50. The Commission also seeks comment on alternatives to modifying current licenses so as not to permit such operations in the 700 MHz Band after February 17, 2009. The Commission seeks comment on whether license terms should be reduced so as to terminate at some other date, *e.g.*, one year after February 17, 2009, or not reduced at all.

51. Along with prohibiting low power auxiliary devices within the 700 MHz Band after the end of the DTV transition, the Commission also proposes to prohibit the manufacture, import, sale, offer for sale, or shipment of devices that operate as low power auxiliary stations in the 700 MHz Band after the end of the DTV transition. The Commission tentatively concludes that this proposed prohibition will help facilitate the DTV transition by helping to address possible concerns about significant unauthorized operation of wireless microphones in the 700 MHz Band, and therefore help minimize the likelihood that additional unauthorized use would occur after the end of the DTV transition.[76] The Commission seeks comment on its tentative conclusions to prohibit the manufacture, import, sale, offer for sale, or shipment of low power auxiliary station devices that operate in the 700 MHz Band, and to have the prohibition take effect on the effective date of the revised rules.

52. To minimize significant economic impact to the firms, including small entities, that are or will become low power auxiliary station licensees or that manufacture, import, sell, or ship devices that operate as low power auxiliary stations in the 700 MHz Band, the *NPRM* seeks comment on the impact that such changes would have on small entities. The Commission will continue to examine alternatives in the future with the objective of eliminating unnecessary regulations and minimizing significant impact on small entities. Toward that end, the Commission seeks comment on alternatives commenters believe the Commission should adopt.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

53. None.

Ordering Clauses

54. Accordingly, *it is ordered*, pursuant to sections 1, 2, 4(i), 4(j), 301, 302, 303, 304, 307, 308, 309, 316, 332, 336, and 337 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 301, 302a, 303, 304, 307, 308, 309, 316, 332, 336, and 337 that this Notice of Proposed Rulemaking and Order in WT Docket No. 08–166 and WT Docket No. 08–167 is hereby adopted.

55. *It is further ordered* that pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on the Notice of Proposed Rulemaking on or before October 3, 2008, and reply comments on or before October 20, 2008.

56. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Notice of Proposed Rulemaking and Order, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. E8–20502 Filed 9–2–08; 8:45 am]

BILLING CODE 6712–01–P

[74] 5 U.S.C. 603(c)(1)–(c)(4).

[75] *See* 47 CFR 74.802(a).

[76] *See NPRM* at para. 14.

DEPARTMENT OF INTERIOR

United States Fish and Wildlife Service

50 CFR Part 17

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[Docket No. 0808191116–81126–01]

RIN 0648–XJ93

Endangered and Threatened Species; Proposed Endangered Status for the Gulf of Maine Distinct Population Segment of Atlantic Salmon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; United States Fish and Wildlife Service (USFWS), Interior.

ACTION: Proposed rule; 12–month petition finding; request for comments.

SUMMARY: We (NMFS and USFWS) have determined that naturally spawned and conservation hatchery populations of Atlantic salmon within the range of the Gulf of Maine (GOM) distinct population segment (DPS), including those that were already listed in November 2000, constitute a new GOM DPS and hence a ''species'' for listing as endangered or threatened consideration under the Endangered Species Act (ESA). This also constitutes a 12–month finding on a petition to list Atlantic salmon in the Kennebec River as endangered. We will propose to designate critical habitat for the GOM DPS in a subsequent **Federal Register** notice.

DATES: Comments on this proposal must be received by December 2, 2008. Public hearing requests must be received by November 17, 2008.

ADDRESSES: You may submit comments, identified by the RIN 0648–AW02, by any of the following methods:

• Electronic Submissions: Submit all electronic public comments via the FederaleRulemaking Portal *http://www.regulations.gov*

• Mail: Assistant Regional Administrator, NMFS, Northeast Regional Office, Protected Resources Division, One Blackburn Drive, Gloucester, MA 01930

• Fax: To the attention of Jessica Pruden at (978) 281–9394.

Instructions: All comments received are a part of the public record and will generally beposted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

The proposed rule and status review report are also available electronically at the NMFS website at *http://www.nero.noaa.gov/prot_res/altsalmon/*.

FOR FURTHER INFORMATION CONTACT: Rory Saunders, NMFS, at (207)866–4049; Jessica Pruden, NMFS, at (978)281–9300 ext. 6532; Lori Nordstrom, USFWS, at (207)827–5938 ext. 13; or Marta Nammack, NMFS, at (301)713–1401.

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We solicit public comment on this proposed listing determination. We anticipate holding up to three public hearings on the proposed rule. Any public hearings will be announced in a separate **Federal Register** notice.

We intend that any final action resulting from this proposal will be as accurate and as effective as possible and informed by the best available scientific and commercial information. Therefore, we request comments or information from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) Information on the effects of conservation hatchery supplementation in reducing the risk of extinction of the GOM DPS. As described in ''Status of the Species'' and ''Factor E'', the high numbers of fish stocked through the conservation hatchery program reduce the risk of extinction for the GOM DPS; however, the numbers of naturally-reared spawning adults in the GOM DPS are extremely low (less than 150). Numbers of naturally-reared spawning adults are an important measure of improved status or recovery. Because of the reduction in extinction risk provided by conservation hatchery supplementation, we seek additional information on the appropriate weight that should be given to the conservation hatchery program in evaluating the status of the GOM DPS;

(2) Information concerning the viability of and/or threats to Atlantic salmon in the GOM DPS; and

(3) Efforts being made to protect Atlantic salmon in the GOM DPS.

Background

We issued a final rule listing the GOM DPS of Atlantic salmon as endangered on November 17, 2000 (65 FR 69469). The GOM DPS was defined as all naturally reproducing wild populations and those river-specific hatchery populations of Atlantic salmon having historical, river-specific characteristics found north of and including tributaries of the lower Kennebec River to, but not including, the mouth of the St. Croix River at the U.S.-Canada border. In the final rule listing the GOM DPS, we did not include fish that inhabit the mainstem and tributaries of the Penobscot River above the site of the former Bangor Dam, the upper Kennebec River, or the Androscoggin River within the GOM DPS (65 FR 69469; November 17, 2000).

In late 2003, we assembled the 2005 Biological Review Team (BRT) comprised of biologists from the Maine Atlantic Salmon Commission, the Penobscot Indian Nation (PIN), and both Services. The 2005 BRT was charged with reviewing and evaluating all relevant scientific information relating to the current DPS delineation (including a detailed genetic characterization of the Penobscot population and data relevant to the appropriateness of including the upper Kennebec and Androscoggin rivers as part of the DPS), determining the conservation status of the populations not included in GOM DPS listed in 2000, and assessing their relationship to that GOM DPS (the GOM DPS that is currently listed). The findings of the 2005 BRT, which are detailed in the 2006 Status Review for Anadromous Atlantic Salmon in the United States (Fay *et al.*, 2006), addressed: the DPS delineation, including whether populations that were not included in the 2000 listing should be included in the GOM DPS; the extinction risks to the species; and the threats to the species. The 2006 Status Review (Fay *et al.*, 2006) underwent peer review by experts in the fields of Atlantic salmon biology and genetics to ensure that it was based on the best available science. Each peer reviewer independently affirmed the major conclusions presented in Fay *et al.* (2006).

We received a petition to list the ''Kennebec River population of anadromous Atlantic salmon'' as an endangered species under the ESA on May 11, 2005. NMFS published a notice in the **Federal Register** on November 14, 2006 (71 FR 66298), concluding that the petitioners (Timothy Watts, Douglas Watts, the Friends of Merrymeeting Bay, and the Maine Toxics Action Coalition) presented substantial scientific information indicating that a listing may be warranted.

This **Federal Register** notice announces our finding regarding the ESA listing status of the GOM DPS and 12–month finding on the petition to list Atlantic salmon in the Kennebec River as endangered.

Policies for Delineating Species Under the ESA

Section 3 of the ESA defines ''species'' as including ''any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' The term ''distinct population segment'' is not recognized in the scientific literature. Therefore, the Services adopted a joint policy for recognizing DPSs under the ESA (DPS Policy; 61 FR 4722) on February 7, 1996. The DPS policy requires the consideration of two elements when evaluating whether a vertebrate population segment qualifies as a DPS under the ESA: (1) the discreteness of the population segment in relation to the remainder of the species or subspecies to which it belongs; and (2) the significance of the population segment to the species or subspecies to which it belongs.

A population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions: (1) it is markedly separated from other populations of the same taxon (an organism or group of organisms) as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation; or (2) it is delimited by international governmental boundaries

within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the ESA (i.e., inadequate regulatory mechanisms).

If a population segment is found to be discrete under one or more of the above conditions, its biological and ecological significance to the taxon to which it belongs is evaluated. This consideration may include, but is not limited to: (1) persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that the loss of the discrete population segment would result in a significant gap in the range of a taxon; (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; and (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

Listing Determinations Under the ESA

The ESA defines an endangered species as one that is in danger of extinction throughout all or a significant portion of its range, and a threatened species as one that is likely to become endangered in the foreseeable future throughout all or a significant portion of its range (sections 3(6) and 3(20), respectively). The statute requires us to determine whether any species is endangered or threatened because of any of the following five factors: (1) the present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence (section 4(a)(1)(A-E)). We are to make this determination based solely on the best available scientific and commercial data available after conducting a review of the status of the species and taking into account any efforts being made by states or foreign governments to protect the species.

Atlantic Salmon Life History

Anadromous Atlantic salmon are a wide ranging species with a complex life history. The historic range of Atlantic salmon occurred on both sides of the North Atlantic: from Connecticut to Ungava Bay in the western Atlantic and from Portugal to Russia's White Sea in the Eastern Atlantic, including the Baltic Sea.

For Atlantic salmon in the United States, juveniles typically spend 2 years rearing in freshwater. Freshwater ecosystems provide spawning habitat and thermal refuge for adult Atlantic salmon; overwintering and rearing areas for eggs, fry, and parr; and migration corridors for smolts and adults (Bardonnet and Bagliniere, 2000). Adult Atlantic salmon typically spawn in early November. The eggs hatch in late March or April. At this stage, they are referred to as alevin or sac fry. Alevins remain in the redd for about 6 more weeks and are nourished by their yolk sac until they emerge from the gravel in mid-May. At this time, they begin active feeding and are termed fry. Within days, the fry enter the parr stage, indicated by vertical bars (parr marks) on their sides that act as camouflage. Atlantic salmon parr are territorial; thus, most juvenile mortality is thought to be density dependent and mediated by habitat limitation (Gee *et al.*, 1978; Legault, 2005). In particular, suitable overwintering habitat may limit the abundance of large parr prior to smoltification (Cunjak *et al.*, 1998). Smoltification (the physiological and behavioral changes required for the transition to salt water) usually occurs at age 2 for most Atlantic salmon in Maine. The smolt emigration period is rather short and lasts only 2 to 3 weeks for each individual. During this brief emigration window, smolts must contend with rapidly changing osmoregulatory requirements (McCormick *et al.*, 1998) and predator assemblages (Mather, 1998). The freshwater stages in the life cycle of the Atlantic salmon have been well studied; however, much less information is available on Atlantic salmon at sea (Klemetsen *et al.*, 2003).

Gulf of Maine Atlantic salmon migrate vast distances in the open ocean to reach feeding areas in the Davis Strait between Labrador and Greenland, a distance over 4,000 km from their natal rivers (Danie *et al.*, 1984; Meister, 1984). During their time at sea, Atlantic salmon undergo a period of rapid growth until they reach maturity and return to their natal river. Most Atlantic salmon (about 90 percent) from the Gulf of Maine return after spending two winters at sea; usually less than 10 percent return after spending one winter at sea; roughly 1 percent of returning salmon are either repeat spawners or have spent three winters at sea (three sea winter 3SW salmon) (Baum, 1997).

In addition to anadromous Atlantic salmon, landlocked Atlantic salmon have been introduced to many lakes and rivers in Maine, though they are only native to four watersheds in the State: the Union, including Green Lake in Hancock County; the St. Croix, including West Grand Lake in Washington County; the Presumpscot, including Sebago Lake in Cumberland County; and the Penobscot, including Sebec Lake in Piscataquis County (Warner and Havey, 1985). There are certain lakes and rivers in Maine where landlocked salmon and anadromous salmon co-exist. Recent genetic surveys have confirmed that little genetic exchange occurs between these two life history types (Spidle *et al.*, 2003, NMFS unpublished data).

Review of Species Delineation

Fay *et al.* (2006) concluded that the DPS delineation as proposed by the previous BRT that resulted in the 2000 listing designation (65 FR 69469; November 17, 2000) was largely appropriate, except in the case of large rivers that were excluded in previous listing determinations. As described below in the analyses of discreteness and significance of the population segment, Fay *et al.* (2006) concluded that the salmon currently inhabiting the larger rivers (Androscoggin, Kennebec, and Penobscot) are genetically similar to the rivers included in the GOM DPS as listed in 2000 (Spidle *et al.*, 2003), have similar life history characteristics, and/or occur in the same zoogeographic region. Further, the salmon populations inhabiting the large and small rivers from the Androscoggin River northward to the Dennys River differ genetically and in important life history characteristics from Atlantic salmon in adjacent portions of Canada (Spidle *et al.*, 2003; Fay *et al.*, 2006). Thus, Fay *et al.* (2006) concluded that this group of populations (population segment) met both the discreteness and significance criteria of the DPS Policy and, therefore, recommended that the new GOM DPS include all anadromous Atlantic salmon whose freshwater range occurs in the watersheds from the Androscoggin River northward along the Maine coast to the Dennys River, including all associated conservation hatchery populations used to supplement these natural populations; currently, such conservation hatchery populations are maintained at Green Lake National Fish Hatchery (GLNFH) and Craig Brook National Fish Hatcheries (CBNFH).

The precise genetic boundary between Atlantic salmon in the United States and Canada is difficult to determine because there are no genetic data on the wild salmon that once occurred in the St. Croix watershed along the U.S.-Canada border. As listed in 2000, the

northern terminus of the GOM DPS was the U.S.-Canada border at the St. Croix River, but as described on page 54 of Fay *et al.* (2006), the best available science suggests that the St. Croix groups with other Canadian rivers. Therefore, we find that the northern terminus of the GOM DPS is the Dennys River watershed, rather than the St. Croix, because genetic analyses found that salmon in the Dennys River are more similar to populations in the United States than to Canadian salmon populations that are geographically proximate to the Dennys (Spidle *et al.*, 2003).

We determined the southern terminus of the GOM DPS to be the Androscoggin River based on zoogeography rather than genetics because there are extremely few Atlantic salmon in the rivers as one moves southward on which to base genetic analyses. The Androscoggin River lies within the Penobscot-Kennebec-Androscoggin Ecological Drainage Unit (Olivero, 2003) and the Laurentian Mixed Forest Province (Bailey, 1995), which separates it from more southern rivers that were historically occupied by Atlantic salmon.

With respect to the ''discreteness'' of this population segment, Fay *et al.* (2006) considered ecological, behavioral, and genetic factors under the first discreteness criterion of the DPS Policy to examine the degree to which it is separate from other Atlantic salmon populations. Gulf of Maine salmon are behaviorally and physiologically discrete from other members of the taxon because they return to their natal Gulf of Maine rivers to spawn, which leads to the separation in stocks that has been observed between the Gulf of Maine and other segments of the taxon. This phenomenon is known as homing and is characteristic of all other anadromous salmonids (Klemetsen *et al.*, 2003; Utter *et al.*, 2004). Baum and Spencer (1990) found that roughly 98 percent of all tagged salmon returned to their natal rivers to spawn.

Ecologically, Gulf of Maine salmon are discrete from other members of the taxon. The core of the riverine habitat of this population segment lies within the Penobscot-Kennebec-Androscoggin Ecological Drainage Unit (Olivero, 2003) and the Laurentian Mixed Forest Province (Bailey, 1995). In particular, Gulf of Maine salmon life history strategies are dominated by age 2 smolts and 2SW adults whereas populations to the north of this population segment are generally dominated by age 3, or older, smolts and 1SW adults (i.e., grilse). Smolt age reflects growth rate (Klemetsen *et al.*, 2003), with faster growing parr emigrating as smolts earlier than slower growing ones (Metcalfe *et al.*, 1990). Smolt age is largely influenced by temperature (Symons, 1979; Forseth *et al.*, 2001) and can therefore be used to compare and contrast growing conditions across rivers (Metcalfe and Thorpe, 1990). For Gulf of Maine populations, smolt ages are quite similar across rivers with naturally-reared (result of either wild spawning or fry stocking) returning adults predominantly emigrating at river age 2 (88 to 100 percent) with the remainder emigrating at river age 3 (Fay *et al.*, 2006).

The strongest evidence that Gulf of Maine salmon are discrete from other members of the taxon is genetic. Fay *et al.* (2006) described genetic structure of this population segment and other stocks in detail in section 6.3.1.3. In summary, three primary genetic groups of North American populations (Spidle *et al.*, 2003; Spidle *et al.*, 2004; Verspoor *et al.*, 2005) are evident. These include the anadromous Gulf of Maine populations (including salmon in the Kennebec and Penobscot Rivers) (Spidle *et al.*, 2003), non-anadromous Maine populations (Spidle *et al.*, 2003), and Canadian populations (Verspoor *et al.*, 2005).

Because of these behavioral, physiological, ecological and genetic factors, we conclude that the Gulf of Maine anadromous population is discrete from other Atlantic salmon populations under the provisions of the DPS Policy.

With respect to the ''significance'' of this population segment, Fay *et al.* (2006) found three of the four ''significance'' factors described in the DPS policy applicable to the GOM DPS.

Under the first ''significance'' factor, Fay *et al.* (2006) concluded that this population segment has persisted in an ecological setting unusual or unique to the taxon for several reasons. First, Gulf of Maine salmon live in and migrate through a unique marine environment. The marine migration corridor for Gulf of Maine salmon begins in the Gulf of Maine that is known for unique circulation patterns, thermal regimes, and predator assemblages (Townsend *et al.*, 2006). Gulf of Maine salmon undertake extremely long marine migrations to feeding grounds off the west coast of Greenland because the riverine habitat they occupy is at the southern extreme of the current North American range. While such vast marine migrations are more common for stocks on the northeast side of the Atlantic, the combination of the long migration distances and the unique setting of the Gulf of Maine, described above, make the oceanic life history of the GOM DPS quite unique from those of other stocks. In addition, the core of the riverine habitat of this population segment lies within the Penobscot-Kennebec-Androscoggin Ecological Drainage Unit (Olivero, 2003) and the Laurentian Mixed Forest Province (Bailey, 1995). The importance of this setting is evidenced by the tremendous production potential of its juvenile nursery habitat that allows production of proportionately younger smolts than Canadian rivers to the north (Myers, 1986; Baum, 1997; Hutchings and Jones, 1998). Thus, the combination of the unique rearing conditions in the freshwater portion of its range combined with the unique marine migration corridor led Fay *et al.* (2006) to conclude that this population segment has persisted in an ecological setting unusual or unique to the taxon.

Under the second ''significance'' factor, Fay *et al.* (2006) concluded that the loss of this population segment would result in a significant gap or constriction in the range of the taxon. The extirpation of this population segment would represent a significant range reduction for the entire taxon Salmo salar because this population segment represents the southernmost native Atlantic salmon population in the western Atlantic; the temperature regimes in these southern rivers made possible the tremendous growth and production potential which resulted in the historically very large populations in these areas. Historic attempts to enhance salmon populations (in Gulf of Maine rivers) using Canadian-origin fish failed. This further illustrates the importance of conserving native populations and the difficulties of restoration if they are lost.

Under the third ''significance'' factor, Fay *et al.* (2006) concluded that this population segment differs markedly from other populations of the species in its genetic characteristics. While genetic differences were used to examine the ''discreteness'' of this population segment, Fay *et al.* (2006) suggested that the ''significance'' of these observed genetic differences is that they provide evidence of local adaptation. That is, low returns of exogenous smolts (i.e., Canadian-origin smolts stocked in Maine) and lower survival of smolts from these Maine rivers stocked outside their native geographic range (e.g., into the Merrimack River) indicate that this population segment is adapted to its native environment.

These three factors led Fay *et al.* (2006) to conclude that this population segment is significant to the Atlantic

salmon species, and therefore, qualifies as a DPS (the new GOM DPS) under the provisions of the DPS Policy.

Fay *et al.* (2006) explicitly considered whether to include hatchery populations in the GOM DPS and concluded that all conservation hatchery populations (currently maintained at GLNFH and CBNFH) should be included in the GOM DPS. This determination was based on the fact that there is a low level of divergence between conservation hatchery populations and the rest of the GOM DPS because: (1) the river-specific hatchery programs collect wild parr or sea-run adults annually (when possible) for inclusion into the broodstock programs; (2) broodstocks are used to stock fry and other life stages into the river of origin, and, in some instances, hatchery-origin individuals represent the primary origin of Atlantic salmon due to low adult returns; (3) there is no evidence of introgression from Canadian-origin populations; and (4) there is minimal introgression from aquaculture fish because of a rigorous genetic screening program. Because the level of divergence is minimal, Fay *et al.* (2006) suggested that hatchery populations should be considered part of the GOM DPS. However, Fay *et al.* (2006) also noted the dangers of reliance on hatcheries. In short, these risks include artificial selection, inbreeding depression, and outbreeding depression. The reader is directed to ''Artificial Propagation'' in ''Factor E'' of this **Federal Register** document and Section 8.5.1 of the 2006 Status Review report for an in depth discussion of these risks.

We concur with the findings and application of the DPS policy described in Fay *et al.* (2006) and therefore conclude that the GOM DPS warrants delineation as a DPS (i.e., it is discrete and significant). Specifically, we conclude that the GOM DPS is comprised of all anadromous Atlantic salmon whose freshwater range occurs in the watersheds from the Androscoggin northward along the Maine coast to the Dennys, including all associated conservation hatchery populations used to supplement these natural populations; currently, such populations are maintained at GLNFH and CBNFH. We consider the hatchery-dependent populations that are maintained at CBNFH and GLNFH essential for recovery of the GOM DPS because the hatchery populations contain a high proportion of the genetic diversity remaining in the GOM DPS (Bartron *et al.*, 2006). Excluded are those salmon raised in commercial hatcheries for aquaculture and landlocked salmon because they are genetically distinguishable from the GOM DPS. The marine range of the GOM DPS extends from the Gulf of Maine to feeding grounds off Greenland. The most substantial difference between the GOM DPS as listed in 2000 and the GOM DPS as proposed in this rule is the inclusion of the entire Androscoggin, Kennebec and Penobscot basins.

Several rivers outside the range of the GOM DPS in Long Island Sound and Central New England contain Atlantic salmon (Fay *et al.*, 2006). The native Atlantic salmon of these areas south of the GOM DPS were extirpated in the 1800s (Fay *et al.*, 2006). However, efforts to restore Atlantic salmon to these areas (e.g., Connecticut, Merrimack, and Saco Rivers) involve stocking Atlantic salmon that were originally derived from the GOM DPS. Atlantic salmon whose freshwater range occurs outside the GOM DPS do not interbreed with salmon within the GOM DPS and are not considered a part of the GOM DPS and are not being considered for protection under the ESA.

Status of the GOM DPS

Since the listing of the GOM DPS of Atlantic salmon in 2000, the numbers of returning adults (both naturally-reared and conservation hatchery stocked) have remained low (Table 1). Of greatest concern is the extremely low number of naturally-reared adults in the GOM DPS. In 2006 (the most recent year for which complete data is available at the time of writing), approximately 1,144 adult salmon returned to rivers within the freshwater range of the GOM DPS. Of these, only 117 were naturally-reared; 91 percent (1,044) of the adult salmon returned to the Penobscot, 95 percent (996) of which were stocked through conservation hatchery programs as smolt (Table 2). The remainder was predominantly naturally-reared salmon that returned to smaller rivers such as the Narraguagus, Pleasant, and Sheepscot Rivers (Table 2). Conservation spawning escapement (CSE) goals are widely used (e.g., International Council for the Exploration of the Sea (ICES), 2005) to describe the status of individual Atlantic salmon populations. When CSE goals are met, Atlantic salmon populations are generally self-sustaining. When CSE goals are not met (i.e., less than 100 percent), populations are not reaching full potential which can be indicative of a population decline. For all rivers in Maine, current Atlantic salmon populations are well below CSE levels required to sustain themselves (Fay *et al.*, 2006), which is further indication of their poor population status.

TABLE 1. ADULT RETURNS TO RIVERS WITHIN THE RANGE OF THE GOM DPS AS LISTED IN 2000, THE PENOBSCOT RIVER, THE KENNEBEC RIVER, AND THE ANDROSCOGGIN RIVER FROM 2001 TO 2006. THESE DATA ARE SUMMARIZED FROM TABLE 3.2.1.2 AND TABLE 16 IN THE UNITED STATES ATLANTIC SALMON ASSESSMENT COMMITTEE REPORT (USASAC, 2007).

Year	Rivers within the range of the DPS as listed in 2000 estimate	Penobscot River Trap Count	Kennebec River Trap Count [a]	Androscoggin River Trap Count	Total Known Returns
2001	103	785	--	5	893
2002	37	780	--	2	819
2003	76	1112	--	3	1191
2004	82	1323	--	11	1416
2005	71	985	--	10	1066
2006	79	1044	15	6	1144

[a] Counts not conducted on the Kennebec until 2006

TABLE 2. ADULT RETURNS TO RIVERS WITHIN THE FRESHWATER RANGE OF THE GOM DPS BY ORIGIN IN 2006. THESE DATA ARE SUMMARIZED FROM TABLE 1 IN THE UNITED STATES ATLANTIC SALMON ASSESSMENT COMMITTEE REPORT (USASAC, 2007).

River	Conservation Hatchery	Naturally-reared	Total
Androscoggin	6	0	6
Kennebec	10	5	15
Dennys	4	2	6
Narraguagus	0	15	15
Other GOM DPS	11	47	58
Penobscot	996	48	1044
Total	1027	117	1144

Currently, the GOM DPS of Atlantic salmon is largely dependent on conservation hatchery supplementation for its persistence. The ultimate goal of the conservation hatchery program is to lead to the recovery of the GOM DPS. We use two recent analyses to inform us about the role of conservation hatcheries in reducing the risk of extinction of the GOM DPS given the low numbers of naturally-reared salmon in the GOM DPS. We do not use either of these analyses to define a point at which we predict the GOM DPS may go extinct or to analyze threats to the GOM DPS because of the assumptions made by each that make them inappropriate to use for such purposes. The two analyses are: (1) Fay *et al.* (2006) in which recent adult return data were used in a population viability analysis (PVA) to assess the extinction probabilities for the GOM DPS (as defined in this proposed rule); (2) Legault (2004 and 2005) in which a novel population modeling tool (SalmonPVA) was used to, in part, begin examining quantitative recovery criteria for the GOM DPS as listed in 2000.

The PVA described in section 7.3 of Fay *et al.* (2006) generally shows that the GOM DPS is likely to continue to decline in terms of adult abundance. In short, these PVA projections show that the GOM DPS is trending towards extinction. The Fay *et al.* (2006) PVA does, however, show the positive population effects of conservation hatcheries (i.e., reducing the risk of extinction). The risk of extinction increases over time, and varies depending on how extinction is defined (i.e., a ''Quasi-Extinction Threshold'' (QET) of one individual vs. 50 or 100 individuals). Using an adult return dataset from a period of low marine survival (1991 to 2004), the likelihood of extinction (QET = 1) for the GOM DPS is 0.8 percent over a 20–year time frame. Even if the timeframe is extended to 100 years, for a QET of one individual the estimated extinction risk remains below 50 percent (37.2 percent). With a QET of 50 individuals, however, the extinction risk increases to 71.2 percent in 100 years. In the analyses, the probability of extinction increases when the QET is larger, and with longer timeframes. Without the smolt stocking program, the risks of extinction would be much greater (Fay *et al.*, 2006).

Legault's PVA (Legault, 2005) demonstrates that current levels of hatchery supplementation substantially reduce extinction risk to the GOM DPS as listed in 2000. For example, in simulations where marine survival estimates were set at the mean of the last 30 years, Legault (2005) estimated that the extinction risk (in the next 100 years) for the GOM DPS as listed in 2000 was near 100 percent if hatchery supplementation ceased in 2015, whereas extinction risks were only approximately 1 percent in simulations where hatchery supplementation continued through the year 2055. These simulations only included those populations specifically named in the GOM DPS as listed in 2000; given that smaller initial population sizes exacerbate the extinction process (Holmes, 2001), adding the Penobscot population into the GOM DPS, as is proposed here, would further reduce the extinction risks compared to those presented by Legault (2005).

Although PVAs are informative in assessing extinction risks, there are several assumptions that must be carefully scrutinized. In particular, the PVA presented by Fay *et al.* (2006) can be considered valid only if the following assumptions are accepted: (1) hatchery supplementation continues into the future at current levels with similar survival rates, and (2) similar threats to the species remain operative into the future (i.e., environmental conditions remain unchanged). Therefore, the PVA projections of extinction risk for the GOM DPS are not necessarily predictive of future conditions, especially over longer time frames, and caution must be used in interpreting results of this or any PVA when making a determination regarding a species' conservation status.

Importantly, all of the extinction risk scenarios assessed by Fay *et al.* (2006) assumed that hatchery supplementation would continue at its present level. The hatchery program, however, and specifically the smolt stocking program that currently sustains the GOM DPS, requires at least 150 returning adults in the GOM DPS. If there were less than 150 adults, smolt production goals could not be met and the hatchery program could not continue at its current level; the likelihood of this occurring has not been determined. The ramifications of an adult population falling below 150 are that severe genetic and demographic problems would arise in the population as the result of the extremely low levels of abundance (Fay *et al.*, 2006). The effect hatchery supplementation has on reducing the risk of extinction of the GOM DPS would also be lost without the smolt stocking program at its current levels, and a steep and rapid population decline to extinction would be expected if hatchery broodstock goals could not be met (i.e., less than 150 adults). In addition, because smolt stocking has a greater positive effect on population demographics than fry stocking (SEI, 2007), the cessation of the smolt stocking that currently sustains the GOM DPS likely would exacerbate extinctions risks considerably more than if fry stocking were discontinued (as considered by Legault (2005)).

In addition, there are negative consequences to hatchery supplementation that are not

incorporated into the PVA. Despite managers' best efforts, long-term artificial propagation and maintenance of a population in captivity may result in negative effects resulting from small population size, inbreeding, and domestication selection that may reduce the long-term viability of the population (see Artificial Propagation in Factor E of this **Federal Register** Notice). We recognize that such effects may be difficult to detect, yet they may be irreversible.

Additional risks of relying on hatchery supplementation that are not explicitly considered in either PVA are described below. The entire hatchery stock for the GOM DPS is maintained in two hatcheries, GLNFH and CBNFH. Although there are strict biosecurity protocols and broodstock management plans in place, there is the potential for a catastrophe to occur at either or both facilities (e.g., disease, loss of funding, loss of electricity), which could result in the loss of many individuals or potentially entire broodstock sources. In the event of such a catastrophe, there would still be two to three age classes at sea; however, it would be extremely difficult to rebuild the broodstock with the remaining small population and limited gene pool. Given the current dependence of the GOM DPS on hatchery supplementation, catastrophic loss of either or both hatchery stocks would cause a steep and rapid decline to extinction, potentially more severe than if broodstock goals cannot be met (as described above). Neither of the PVAs (Legault, 2005; nor Fay *et al.*, 2006) explicitly considered the risk of catastrophic loss of both conservation hatchery programs.

To summarize the information we have obtained from the PVAs (Legault, 2005; Fay *et al.*, 2006), the GOM DPS is trending toward extinction though conservation hatchery supplementation buffers the extinction risk. If the number of returning adults falls below 150, the current levels of conservation hatchery supplementation (smolt stocking, in particular) would be impossible to maintain, resulting in a rapid and steep decline to extinction. This scenario was not modeled in either PVA; therefore, we are not able to predict timeframes to how soon extinction might occur without hatchery supplementation.

To summarize the status of the GOM DPS, the total number of naturally-reared, spawning adult salmon continues to be extremely low (117 in 2006 data summarized from USASAC, 2007). In 2006 there were 1,027 smolt-stocked adults in the GOM DPS (data summarized from USASAC (2007)). Hatchery supplementation reduces the risk of extinction by increasing the number of juveniles in the GOM DPS, thereby maintaining low levels of spawning adults returning to the system. However, these programs have not yet been successful at recovering or maintaining wild, self-sustaining populations of Atlantic salmon as evidenced by the low numbers of naturally-reared adults in the GOM DPS. The majority of salmon within the freshwater range of the GOM DPS return to a single river system, the Penobscot; of these, approximately 90 percent were stocked as smolts.

Summary of Factors Affecting the GOM DPS

Section 4 of the ESA (16 U.S.C. 1533) and implementing regulations at 50 CFR part 424 set forth procedures for adding species to the Federal List of Endangered and Threatened Species. Under section 4(a) of the Act, we must determine if a species is threatened or endangered because of any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

We have described the effects of various factors leading to the decline of Atlantic salmon in previous listing determinations (60 FR 50530, September 29, 1995; 64 FR 62627, November 17, 1999; 65 FR 69459, November 17, 2000) and supporting documents (NMFS and USFWS, 1999; NMFS and USFWS, 2005). The reader is directed to section 8 of Fay *et al.*, (2006) for a more detailed discussion of the factors affecting the GOM DPS. In making this finding, information regarding the status of the GOM DPS of Atlantic salmon is considered in relation to the five factors provided in section 4(a)(1) of the ESA.

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Changes to the GOM DPS's natural environment are ubiquitous. Both contemporary and historic land and water use practices such as damming of rivers, forestry, agriculture, urbanization, and water withdrawal have substantially altered Atlantic salmon habitat by: (1) eliminating and degrading spawning and rearing habitat, (2) reducing habitat complexity and connectivity, (3) degrading water quality, and (4) altering water temperatures. These impacts and their effects on salmon are described in detail by Fay *et al.* (2006). Here we summarize the stressors that we believe are having the greatest impact on the GOM DPS.

Dams are among the leading causes of both historic declines and contemporary low abundance of the GOM DPS of Atlantic salmon. Dams directly limit access to otherwise suitable habitat. Prior to the construction of mainstem dams in the early 1800s, the upstream migrations of salmon extended well into headwaters of large and small rivers alike, unless a naturally impassable waterfall existed. For example, Atlantic salmon were found throughout the West Branch of the Penobscot River (roughly 350 km inland) and as far as Grand Falls (roughly 235 km inland) on the Dead River in the Kennebec Drainage (Foster and Atkins, 1867; Atkins, 1870). Today, however, upstream passage for salmon on the West Branch of the Penobscot is nonexistent and limited to trapping and trucking salmon above the first mainstem dam on the Kennebec. Dams also change hydraulic characteristics of rivers. These changes, combined with reduced, non-existent, or poor fish passage, influence fish community structure. Specifically, dams create slow-moving impoundments in formerly free-flowing reaches. Not only are these altered habitats less suitable for spawning and rearing of Atlantic salmon, they may also favor nonnative competitors such as smallmouth bass (*Micropterus dolomieu*) over native species such as brook trout (*Salvelinus fontinalis*) and American shad (*Alosa sapidissima*). Fish passage inefficiency also leads to direct mortality of Atlantic salmon. Upstream passage effectiveness for anadromous fish species never reaches 100 percent, and substantial mortality and migration delays occur during downstream passage events through screen impingement and turbine entrainment. The cumulative losses of smolts, in particular, incrementally diminish the productive capacity of freshwater rearing habitat above hydroelectric dams. Comprehensive discussions of the impacts of dams are presented in sections 8.1, 8.3, and 8.5.4 of Fay *et al.* (2006) and NRC (2004).

As supported by the information in the Status Review, we find that the threat of dams and their inter-related effects on freshwater salmon habitat is one of the three (in addition to the inadequacy of existing regulatory mechanisms for dams (see discussion in Factor D below) and the low marine survival, (see discussion in Factor E below) most influential stressors

negatively affecting the persistence of the GOM DPS.

Some forest, agricultural, and other land use practices have reduced habitat complexity within the range of the GOM DPS of Atlantic salmon. Large woody debris (LWD) and large boulders are currently lacking from many rivers because of historic practices. When present, LWD and large boulders create and maintain a diverse variety of habitat types. Large trees were harvested from riparian areas; this reduced the supply of LWD to channels. In addition, any LWD and large boulders that were in river channels were often removed in order to facilitate log drives. Historical forestry and agricultural practices were likely the cause of currently altered channel characteristics, such as width-to-depth ratios (i.e., channels are wider and shallower today than they were historically). Channels with large width-to-depth ratios tend to experience more rapid water temperature fluctuations, which is stressful for salmon, particularly in the summer when temperatures are warmer. Further discussions of the impacts of reduced habitat complexity are presented in section 8.1.2 of Fay *et al.* (2006). Within Factor A, we find that the threat to the persistence of the GOM DPS from reduced habitat complexity is secondary to the significant threat posed by dams.

Habitat connectivity has been reduced because of dams and poorly designed road crossings. Further discussions of the impacts of reduced habitat connectivity are presented in section 8.1.2 of Fay *et al.* (2006). As a highly migratory species, Atlantic salmon require a diverse array of well-connected habitat types in order to complete their life history. Impediments to movement between habitat types can limit access to potential habitat and, therefore, directly reduce survival in freshwater. In some instances, barriers to migration may also impede recovery of other diadromous fishes as well. For example, alewives (*Alosa pseudoharengus*) require free access to lakes to complete their life history. To the extent that salmon require other native diadromous fishes to complete their life history (see ''Depleted Diadromous Communities'' in ''Factor E'' of this **Federal Register** notice), limited connectivity of freshwater habitat types may limit the abundance of salmon through diminished nutrient cycling, and a reduction in the availability of co-evolved diadromous fish species that provide an alternative prey source and serve as prey to GOM DPS Atlantic salmon. Restoration efforts in the Machias, East Machias and Narraguagus Rivers have improved passage at road crossings by replacing poorly-sized and poorly-positioned culverts. However, many barriers of this type remain throughout the GOM DPS. Within Factor A, we find that the threat to the persistence of the GOM DPS from reduced habitat connectivity (resulting from causes other than dams) is secondary to the significant threat posed by dams.

A number of other human-caused perturbations continue to negatively modify Atlantic salmon habitat within the range of the GOM DPS. Water withdrawals that reduce water quality (e.g., temperature and dissolved oxygen) and in-stream flows to levels that cannot sustain Atlantic salmon populations have been documented in rivers within the range of the GOM DPS. Elevated sedimentation from forestry, agriculture, urbanization, and roads can reduce survival at several life stages, most importantly egg survival, as well as alter in-stream habitat and habitat use patterns by filling pools, and adversely affect aquatic invertebrate populations that are an important food source for salmon. Acid rain reduces pH in surface waters with low buffering capacity, and reduced pH impairs osmoregulatory abilities and seawater tolerance of Atlantic salmon smolts. A variety of pesticides, herbicides, trace elements, and other contaminants are found at varying levels throughout the range of the GOM DPS. These contaminants have been demonstrated to cause lethal and sub-lethal impacts, such as impaired olfactory capabilities, to salmon. Fay *et al.* (2006) provide a thorough discussion of these habitat alterations in sections 8.1.1 and 8.1.3. Within Factor A, we find that the threat to the persistence of the GOM DPS from poor water quality is secondary to the significant threat posed by dams.

The GOM DPS of Atlantic salmon is negatively affected by ongoing changes in its freshwater habitat as a result of land and water use practices as considered above in Factor A. Within Factor A, we find that dams and their inter-related effects are significant threats to the persistence of the GOM DPS; secondary threats to the persistence of the GOM DPS are stressors that reduce habitat connectivity (other than dams), reduce habitat complexity, and negatively affect water quality. We conclude that threats from dams, the inadequacy of existing regulatory mechanism for dams (described below in Factor D), and low marine survival (described below in Factor E), are the most influential stressors negatively affecting the persistence of the GOM DPS.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The GOM DPS of Atlantic salmon has supported important tribal, recreational, and commercial fisheries. In the past, these fisheries have been conducted throughout nearly all of the GOM DPS's habitats, including in-river, estuarine, and off-shore (see section 8.2 of Fay *et al.* (2006) for additional information regarding Overutilization as it affects Atlantic salmon).

Atlantic salmon are an integral part of the history of Native American tribes in Maine, particularly the PIN. The species represents both an important resource for food, and perhaps more importantly, a cultural symbol of the deeply engrained connection between the PIN and the Penobscot River. In accordance with the Maine Indian Land Claims Settlement Act, the PIN retains the right of its members to harvest Atlantic salmon for subsistence and sustenance purposes, and to self-regulate that harvest. The PIN has harvested only two salmon under these provisions, and has voluntarily decided not to harvest any Atlantic salmon since 1988, because of the depleted status of the species.

Recreational fisheries for Atlantic salmon in Maine date back to the early to mid–1800s. Since 1880, over 25,000 Atlantic salmon have been landed in Maine rivers, roughly 14,000 in the Penobscot River alone (Baum, 1997). Historically, Atlantic salmon sport anglers practiced very little catch and release. Beginning in the 1980s as runs decreased, the Maine Atlantic Sea Run Salmon Commission imposed increasingly restrictive regulations on the recreational harvesting of Atlantic salmon in Maine. The allowable annual harvest per angler for these rivers was reduced from 10 salmon in the 1980s to 1 grilse in 1994. Angling was closed on the Pleasant River from 1986 to 1989. In 1990, a one year catch and release fishery was allowed on the Pleasant River. In 1995, regulations were promulgated for catch and release fishing for sea-run Atlantic salmon throughout the other Maine salmon rivers, closing the last remaining recreational harvest opportunities for sea run Atlantic salmon in the United States. In 2000, all directed recreational fisheries for sea run Atlantic salmon in Maine were closed until 2006 when a short, highly regulated, experimental catch and release fishery was opened on the Penobscot River below Veazie Dam. The 30–day angling season began on September 15, 2006, and resulted in one Atlantic salmon being caught and released on September 20, 2006. This

fishery was opened again on September 15, 2007. In 2008, the Maine Atlantic Salmon Commission Board authorized a 30–day catch and release fishery for the spring of 2008. This fishery poses a risk to returning sea-run Atlantic salmon because it occurs at a time of year before broodstock have been collected, which is essential to maintain current levels of conservation hatchery supplementation, and would further risk the likelihood of achieving the scientifically sound and mutually-agreed goals set forth in the Broodstock Management Plan (P. Kurkul, NOAA, in litt. February 1, 2008).

Poaching and incidental capture remain concerns to the status of Atlantic salmon in Maine. Incidental capture of parr and smolts, primarily by trout anglers, and of adult salmon, primarily by striped bass anglers, has been documented. Targeted poaching for adult salmon occurs at low levels as well. Low returns of adult salmon to Maine rivers highlight the importance of continuing to reduce any source of mortality, particularly at later life stages.

Commercial fishing for Maine Atlantic salmon historically occurred in rivers, estuaries, and on the high seas. While most directed commercial fisheries for Atlantic salmon have ceased, the impacts from past fisheries are important in explaining the present low abundance of the GOM DPS. Also, the continuation of offshore fisheries for Atlantic salmon, albeit at reduced levels, influences the current status of the GOM DPS.

Nearshore fisheries for Atlantic salmon in Maine were quite common in the late 1800s. In 1888, roughly 90 metric tons (mt) of salmon were harvested in the Penobscot River alone. As stocks continued to decline through the early 1900s, the Maine Atlantic Sea Run Salmon Commission closed the nearshore commercial fishery for Atlantic salmon after the 1947 season when only 40 fish (0.2 mt) were caught. Directed fisheries for Atlantic salmon in U.S. territorial waters were further limited by regulations implementing the Atlantic salmon fishery management plan (FMP) in 1987 (NEFMC, 1987). These regulations prohibit possession of Atlantic salmon in the U.S. exclusive economic zone. While nearshore fisheries for Atlantic salmon have ceased, the impacts from past fisheries are important in explaining the present low abundance of the GOM DPS.

Directed fishing for other species has the potential to intercept salmon as by-catch. Beland (1984) reported that fewer than 100 salmon per year were caught incidental to other commercial fisheries in the coastal waters of Maine. Recent investigations also suggest that by-catch of Atlantic salmon in herring fisheries is not a significant mortality source for U.S. stocks of salmon (ICES, 2004).

Offshore, directed fisheries for Atlantic salmon continue to affect the GOM DPS, though these fisheries have been substantially reduced in recent years. The combined harvest of 1SW Atlantic salmon of U.S. origin in the fisheries off West Greenland and Canada averaged 5,060 fish, and returns to U.S. rivers averaged 2,884 fish from 1968 to 1989 (ICES, 1993); we estimate that roughly 87 percent of all U.S. adult returns during the time period 1968 to 1989 originated from the GOM DPS, and thus roughly 2,519 of the 2,884 of the above returns were to the GOM DPS. ICES (1993) estimated that adult returns to U.S.rivers could have potentially been increased by 2.5 times in the absence of West Greenland and Labrador fisheries during that time period. The United States joined with other North Atlantic nations in 1982 to form the North Atlantic Salmon Conservation Organization (NASCO) for the purpose of managing salmon through a cooperative program of conservation, restoration, and enhancement of North Atlantic stocks. NASCO achieves its goals by managing the exploitation by member nations of Atlantic salmon that originated within the territory of other member nations. The United States' interest in NASCO stemmed from its desire to ensure that interception fisheries of U.S. origin fish did not compromise the long-term commitment by the states and Federal government to rehabilitate and restore New England Atlantic salmon stocks. Since the establishment of NASCO in 1982, commercial quotas for the West Greenland fishery have steadily declined, as has the abundance of most stocks that make up this mixed stock fishery (including the GOM DPS). Quotas have been restricted to an internal use fishery (i.e., no fish were sold internationally) in the following years: 1998–2000; 2003–2007; and provisionally for 2008.

In addition, a small commercial fishery occurs off St. Pierre et Miquelon, a French territory south of Newfoundland. Historically, the fishery was very limited (2 to 3 mt per year). There is great interest by the United States and Canada in sampling this catch to gain more information on stock composition. In recent years, there has been a reported small increase in the number of fishermen participating in this fishery. A small sampling program was initiated in 2003 to obtain biological data and samples from the catch. Genetic analysis on 134 samples collected in 2004 indicated that all samples originated from North America, and approximately 1.9 percent were of U.S. origin. The 90–percent confidence interval around this estimate was 0–77 U.S.-origin salmon (ICES, 2006), and since roughly 87 percent of all U.S. returns originated from the GOM DPS in 2004 (USASAC, 2005), we estimate that up to 67 fish harvested in this fishery originated from the GOM DPS. Efforts to continue and increase the scope of this sampling program are ongoing through NASCO. These data are essential to understanding the impact of this fishery on the GOM DPS.

A multi-year conservation agreement was established in 2002 between the North Atlantic Salmon Fund and the Organization of Hunters and Fishermen in Greenland, effectively buying out the commercial fishery for Atlantic salmon for a 5–year period. The internal-use fishery is not included in the agreement. From 2002 to 2005, the internal-use fishery harvested between 19 and 25 mt (reported and unreported catch) annually. Genetic analysis performed on samples obtained from the 2002 to 2004 fisheries estimated the North American contribution at 64–73 percent, with the United States contributing between 0.1 and 0.8 percent of the total. The 90 percent confidence interval for the U.S. estimates are 0 to 141 salmon in 2002, 5 to 132 salmon in 2003, and 0 to 64 salmon in 2004 (ICES, 2006). In June 2007, the agreement was extended and revised to cover the 2007 fishing season. The agreement may continue to be extended on an annual basis through 2013.

Overutilization for recreational and commercial purposes was a factor that contributed to the historic declines of the GOM DPS. The current low numbers of adult salmon in the GOM DPS magnify the negative population effects caused by any take that occurs through commercial, recreational, scientific or educational purposes; however, we find the threats from overutilization (Factor B) to the persistence of the GOM DPS are secondary to threats identified above in Factors A (dams), and below in D (inadequacy of existing regulatory mechanisms for dams) and E (low marine survival).

C. Disease or Predation

Fish diseases have always represented a source of mortality to Atlantic salmon in the wild (for a more thorough discussion see section 8.3.2 of Fay *et al.* (2006)). Atlantic salmon are susceptible to numerous bacterial, viral, and fungal diseases. Bacterial diseases common to New England waters include Bacterial Kidney Disease (BKD), Enteric

Redmouth Disease (ERM), Cold Water Disease (CWD), and Vibriosis (Mills, 1971; Gaston, 1988; Olafsen and Roberts, 1993; Egusa, 1992). To reduce the likelihood of disease outbreaks or epizootic events, cultured salmon used for aquaculture purposes routinely receive vaccinations for these pathogens prior to stocking into marine sites. Fungal diseases such as Furunculosis can affect all life stages of salmon in both fresh and salt water, and the causative agent (Saprolignia spp.) is ubiquitous to most water bodies. The risk of an epizootic occurring during fish culture operations is greater because of the increased numbers of host animals reared at much higher densities than would be found in the wild. In addition, stressors associated with intensive fish culture operations (i.e., handling, stocking, tagging, and sea-lice loads) may increase susceptibility to infections. Disease from fish culture operations may be spread to wild salmon directly through effluent discharge or indirectly from either escapes of cultured salmon, or through smolts and returning adults passing through embayments where pathogen loads are increased to a level such that infection occurs and diseases may be transferred.

A number of viral diseases that could affect wild populations have occurred during the culture of Atlantic salmon, such as Infectious Pancreatic Necrosis, Salmon Swimbladder Sarcoma Virus, Infectious Salmon Anemia (ISA), and Salmon Papilloma (Olafsen and Roberts, 1993). In 2007, the Infectious Pancreatic Necrosis virus was isolated in sea run fish in the Connecticut River program. It is most likely these fish contracted the disease during their time at sea and it was detected in the hatchery due to the rigorous fish health monitoring and assessment protocols. ISA is of particular concern for the GOM DPS because of the nature of the pathogen and the high mortality rates associated with the disease. Most notably, a 2001 outbreak of ISA in Cobscook Bay led to an emergency depopulation of all commercially cultured salmon in the bay. In addition to complete depopulation of all cultured salmon, the MDMR ordered all cages be thoroughly cleaned and disinfected, all sites be fallowed for 3 months, and subsequent re-stocking of cages occur at lower densities with only a single year class. These measures were initially successful; however, subsequent testing for ISA has revealed additional detections of the virus in Cobscook Bay (Maine) sites in 2003, 2004, 2005, and 2006.

Disease(s) can have devastating population-wide effects when they occur; we find that the threat from disease (within Factor C) to the persistence of the GOM DPS is secondary to threats identified in above in Factors A (dams) and below in D (inadequacy of existing regulatory mechanisms for dams), and E (low marine survival).

Predation is a natural and necessary process in properly functioning aquatic ecosystems (for a comprehensive discussion see section 8.3.1 of Fay *et al.* (2006)). Atlantic salmon have evolved a suite of strategies that allow them to co-exist with the numerous predators they encounter throughout their life cycle. However, natural predator-prey relationships in aquatic ecosystems in Maine have been substantially altered through the spread of nonnative fish species (e.g., smallmouth bass), habitat alterations (e.g., river channel simplification and dams), and the decline of other diadromous species that would otherwise serve as an alternative prey source for fish that feed on Atlantic salmon smolts and adults.

The threat of predation on the GOM DPS of Atlantic salmon is important because of the imbalance between the very low numbers of adults returning to spawn and the recent increase in population levels of some native predators such as double-crested cormorants, striped bass, and several species of seals as well as non-native predators, such as smallmouth bass; we find that the threat from predation (within Factor C) to the persistence of the GOM DPS is secondary to threats identified above in Factors A (dams) and below in D (inadequacy of existing regulatory mechanisms for dams), and E (low marine survival).

D. Inadequacy of Existing Regulatory Mechanisms

A variety of state and Federal statutes and regulations directly or indirectly address potential threats to Atlantic salmon and their habitat. These laws are complemented by international actions under NASCO and many interagency agreements and state-Federal cooperative efforts specifically designed to protect Atlantic salmon. Implementation and enforcement of these laws and regulations could be strengthened to further protect Atlantic salmon. State and Federal agencies have established coordination mechanisms and joined with private industries and landowners in partnerships for the protection of Atlantic salmon. These partnerships will be critical to the recovery of the species. However, there are still major threats to the GOM DPS for which current regulatory mechanisms remain inadequate, such as dams, water withdrawals, and degraded water quality. For further discussion of these regulatory mechanisms, see section 8.4 of Fay *et al.* (2006).

Dams

Atlantic salmon require a diverse array of well connected habitat types in order to complete their life history. Present conditions within the range of the GOM DPS only allow salmon to access a fraction of river miles that were historically accessible. Even where salmon can presently access suitable habitat, they must often pass several dams to reach their natal spawning habitat.

Most hydroelectric dams in the large watersheds of the GOM DPS (Penobscot, Kennebec, and Androscoggin) are licensed by the Federal Energy Regulatory Commission (FERC) under the Federal Power Act (FPA). Currently, within the historic range of Atlantic salmon in the GOM DPS there are 19 hydroelectric dams in the Androscoggin watershed, 18 in the Kennebec watershed, and 23 in the Penobscot watershed. Although Section 18 of the FPA authorizes the Services to prescribe upstream and downstream fishways, 16 hydroelectric dams within the range of the GOM DPS in the Androscoggin watershed are impassible due to the lack of fishways, along with 15 dams in the Kennebec, and 12 dams in the Penobscot. Presently, 15 dams in the Androscoggin, 7 dams in the Kennebec, and 9 dams in the Penobscot are FERC-licensed without any prescribed fish passage requirements. In these cases, reservations of FPA section 18 authority are often in place that could allow fishways to be prescribed by the Services. However, a substantial amount of mortality and passage inefficiency would still occur even with fishways, given that fish passage facilities are never 100 percent efficient. In addition, implementing any new fishway prescriptions could take several years because the FERC rehearing process must first run its course.

Furthermore, fish passage is not the only threat to salmon caused by hydroelectric dams. The effects of habitat degradation and the altered environmental features that favor nonnative species pose an equal or even greater impediment to Atlantic salmon recovery via reduction in production capacity of freshwater rearing areas above dams. Sections 10(a) and 10(j) of the FPA could be used by the Services to recommend measures to minimize these effects, but these mechanisms are largely discretionary and often not

required by the FERC (Black *et al.*, 1998). Section 4(e) of the FPA requires FERC to give equal consideration to developmental and nondevelopmental values on Federal reservations. In other parts of the country, section 4(e) is often used by the Services to recommend fisheries enhancements; however, Federal lands where Section 4(e) could be applied are rare in Maine.

For a hydropower project to be relicensed by the FERC, the State of Maine must first certify that continued operation of the project will comply with Maine's water quality standards pursuant to Section 401 of the Clean Water Act. The Maine Department of Environmental Protection (MDEP) is the certifying agency for all hydropower project licensing and relicensings in the State of Maine, except for projects in unorganized territories subject to permitting by the Land Use Regulation Commission (LURC). Through the water quality certification process, the MDEP can require fish passage and habitat enhancements at FERC licensed hydroelectric projects.

The vast majority of dams within the range of the GOM DPS do not require either a FERC license or MDEP water quality certificate. These non-jurisdictional dams are typically small, non-generating dams that were historically used for a variety of purposes, including flood control, storage, and process water (for industries such as blueberry harvesting). Practically all of these dams within the range of the GOM DPS do not have fish passage facilities and impact historical Atlantic salmon habitat. Many of these non-jurisdictional dams are no longer used for their intended purposes; however, many smaller dams maintain water levels in lakes and ponds. Although the MDEP can be petitioned by the public to set minimum flows and water levels at these dams, the MDEP has no direct statutory authority under Maine law to require fisheries related enhancements without public request or petition. Removal of non-hydropower generating dams in Maine may require a permit under the Maine Natural Resources Protection Act or the Maine Waterway Development and Conservation Act. Owners of non-hydroelectric dams can petition the MDEP to be released from ownership; however, the MDEP does not have the authority to require dam removal without the consent of the owner.

We find that the threat from the inadequacy of existing regulatory mechanisms for dams is one of the three most influential stressors, in addition to threats from dams on freshwater salmon habitat (see discussion in Factor A above) and low marine survival (see discussion in Factor E below), negatively affecting the persistence of the GOM DPS.

Water Withdrawals

Maine has made substantial progress in regulating water withdrawal for agricultural use. Requests for water withdrawals for irrigation in unorganized towns in Maine require approval from the LURC. In approving any request for water withdrawals, the LURC must ensure that the action does not cause a surface water body to be unsuitable for the existing and designated uses of the water body or otherwise result in a violation of state or Federal water quality laws. The State of Maine recently approved a new rule (Chapter 587) that establishes river and stream flows and lake and pond water levels to protect natural aquatic life and other designated uses in Maine's waters. These rules were passed in response to Maine statutory requirements of Title 38, sections 470–E and 470–H, to ''establish water use standards for maintaining in-stream flows and GPA (Great Pond Class A) lake or pond water levels that are protective of aquatic life and other uses and that establish criteria for designating watersheds most at risk from cumulative water use.'' The new standards are based on natural variation of flows and water levels, but allow variances if use will still be protective of applicable state and Federal water quality classifications. In addition, in 2002 the State of Maine enacted legislation (LD 1488), referred to as the Sustainable Water Use Policy, that requires the MDEP to work with state, regional, and local agencies to develop water use policies that protect the environment from excessive drawdown of water sources, including rivers, lakes, streams, and ground water, during low flow periods, and requires major water users to report any use that is above threshold levels. The Commissioner of the MDEP is then required to submit a summary report on major water uses to the legislature on an annual basis. It is unclear how many, if any, municipalities have developed their own water use policies and while these policies consider general effects on the environment; no special consideration is required for the protection of Atlantic salmon or its habitat.

We find the threat from the inadequacy of existing regulatory mechanisms for water withdrawals to the persistence of the GOM DPS to be secondary to the significant threat posed by dams (within Factor A above), the inadequacy of existing regulatory mechanisms for dams (within Factor D below), and low marine survival (within Factor E below).

Water Quality

The MDEP issues National Pollutant Discharge Elimination System (NPDES) permits for point source discharges from freshwater hatcheries, municipal facilities, and other industrial facilities. Currently, we review and comment only on NPDES permits issued to facilities that discharge within the range of the GOM DPS as listed in 2000 (i.e., excluding the upper Penobscot, upper Kennebec, and Androscoggin). Therefore, MDEP could potentially be permitting discharges that do not minimize adverse effects on salmon populations in the larger rivers in Maine (e.g., Penobscot). There is currently no mechanism that would require MDEP to seek the Services' review and comments on NPDES permits issued for river systems where populations of Atlantic salmon are not currently listed under the ESA. An overboard discharge (OBD) is the discharge of wastewater from residential, commercial, and publicly owned facilities to Maine's streams, rivers lakes, and the ocean. OBDs will continue to contribute to poor water quality throughout the State until the regulatory phase-out is complete. The regulatory framework for the phase-out of OBDs includes: the OBD Grant Removal Program that awards partial or full funding to facilities to purchase an OBD replacement system, with priority given to those OBDs that occur in high value shellfish areas; a prohibition on licensure for new OBDs unless the discharges were in continuous existence 12 months preceding June 1, 1987; a requirement that the buyers of properties served by OBDs obtain a qualified evaluation of whether the OBD can be replaced with a non-discharging alternative system prior to the sale of the property; and the requirement of proof, prior to license renewal, that the OBD owner had an evaluation completed to determine whether a technologically feasible replacement exists for an existing OBD system.

The NMFS Habitat Conservation Division has the opportunity to comment on draft NPDES permits with respect to potential effects on Essential Fish Habitat (EFH) under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act. Because MDEP is not required to submit draft NPDES permits to NMFS' Habitat Conservation Division before issuing the final permit, however NMFS' Habitat Conservation Division does not consistently review and comment on NPDES permits and potential effects on Atlantic salmon EFH.

We find the threat from the inadequacy of existing regulatory mechanisms for water quality to the persistence of the GOM DPS to be secondary to the significant threat posed by dams (within Factor A above), the inadequacy of existing regulatory mechanisms for dams (within Factor D), and low marine survival (within Factor E below).

In summary, our review of state and national regulatory mechanisms under Factor D demonstrates that although regulatory mechanisms are in place that should address direct and incidental take of Atlantic salmon and conserve salmon habitat, these regulatory mechanisms are insufficient or are not being implemented effectively to address the needs of salmon. We find that the threat from the inadequacy of existing regulatory mechanisms for dams is one of the three most significant stressors negatively affecting the persistence of the GOM DPS (in addition to the threat from dams on freshwater salmon habitat (within Factor A) and low marine survival (within Factor E below). The threat to the persistence of the GOM DPS as a result of the inadequacy of regulatory mechanisms to address direct and incidental take of salmon, water withdrawals and water quality is secondary to threats from dams (within Factor A above), the inadequacy of existing regulatory mechanisms for dams (within Factor D), and low marine survival (within Factor E below).

E. Other Natural or Manmade Factors Affecting its Continued Existence

Artificial Propagation

Hatchery supplementation through captive propagation and maintenance of broodstocks can have positive and negative effects on the recovery and conservation of naturally spawning salmonid populations (see section 8.5.1 of Fay *et al.* (2006) for a more comprehensive discussion). We assessed the effect of the conservation hatchery programs in terms of the positive or negative contribution of the program to recovery and conservation of naturally spawning Atlantic salmon in the GOM DPS. From the following assessment, we were able to determine how the current conservation hatchery program may influence the extinction risk projections of the PVA. Below we describe several ways in which hatchery supplementation reduces the risk of extinction of the GOM DPS and also note several potential risks of reliance on the conservation hatcheries.

The USFWS operates two hatcheries in support of Atlantic salmon recovery efforts in Maine. Together, GLNFH and CBNFH raise and stock over 600,000 smolts and 3.5 million fry annually. The primary focus of the conservation hatchery program for Atlantic salmon in the GOM DPS is to conserve the genetic legacy of Atlantic salmon in Maine until habitats can support natural, self-sustaining populations (Bartron *et al.*, 2006). As such, a great deal of consideration is given to broodstock collection, spawning protocols, genetic screening for aquaculture escapees, and other considerations as outlined by Bartron *et al.* (2006). The current program started in 1992, when a river-specific broodstock and stocking program was implemented for rivers in Maine (Bartron *et al.*, 2006). This strategy complies with NASCO guidelines for stock rebuilding (USASAC, 2005). The stocking program was initiated for two reasons: (1) Runs were declining in every river in Maine, and numerous studies indicated that restocking efforts are more successful when the donor population comes from the river to be stocked (Moring *et al.*, 1995); and (2) The numbers of returning adult Atlantic salmon to the rivers were very low, and artificial propagation had the potential to increase the number of juvenile fish in the river through fry and other early life stage stocking. Current practices of fry, parr, and smolt stocking as well as recovery of parr for hatchery rearing ensure that river-specific brood stock is available for future production.

Atlantic salmon from the Narraguagus, Pleasant, Sheepscot, Machias, East Machias, and Dennys populations are maintained at CBNFH (Bartron *et al.*, 2006) in East Orland, Maine. Additionally, adult Atlantic salmon are trapped at the Veazie Dam on the Penobscot River, transferred to CBNFH, and held until spawning in the fall of each year. Adult Atlantic salmon (with the exception of the Penobscot River) are maintained in one of six river-specific broodstock rooms. Within each broodstock room, adults are maintained separately by capture year. Capture year is defined as the year parr were collected from a river. Each capture year may represent one to two year classes. In addition, fully captive lines, or ''pedigree lines,'' can be and are implemented when the recovery of parr from the river environment is expected to be low to ensure future spawning stock is available (Bartron *et al.*, 2006). Pedigree lines are established at the time of stocking, where a proportional representation of each family from a particular river-specific broodstock is retained in the hatchery while the rest of the fry are stocked into the river. If parr are recovered from the fry stocking for the pedigree lines, individuals are screened to determine origin and familial representation and are integrated into the pedigree line to maintain some component of natural selection.

The goals of the captive propagation program include maintenance of the unique genetic characteristics of each river-specific broodstock and maintenance of genetic diversity within each broodstock (Bartron *et al.*, 2006). Evaluation of estimates of genetic diversity within captive populations, such as average heterozygosity, relatedness, and allelic diversity and frequency are monitored within the hatchery broodstocks according to the CBNFH Broodstock Management Plan (Bartron *et al.*, 2006).

In summary, hatchery supplementation positively influences extinction risk projections (i.e., reduces the chances of extinction) for the GOM DPS through the following mechanisms:

1. A rigorous genetic screening program reduces the risks of outbreeding depression that may otherwise result from aquaculture escapees or their progeny being integrated into the genome of the GOM DPS;
2. The effective use of spawning protocols preserves genetic variation inherent in each of the genetically unique river populations maintained at CBNFH, ensures the long-term maintenance of genetic variation, and minimizes the potential for inbreeding or domestication selection and associated reductions in fitness in the wild;
3. The use of captive broodstock from seven separate populations reduces the risks of random environmental and demographic events;
4. The use of pedigree lines for those populations most at risk reduces the chance of catastrophic loss of an entire population;
5. Stocking of juveniles into rivers significantly reduces the risks of catastrophic loss at CBNFH. That is, if a catastrophic loss of one or more captive broodstock lines occurred at CBNFH, a component of the genetic variability lost could be recovered by collecting parr for broodstock;
6. Stocking of large numbers of smolts (Penobscot and Narraguagus) enhances adult returns, thus reducing demographic risks;
7. Stocking large numbers of smolts (Penobscot and Narraguagus) reduces the risks of catastrophic loss because at least one cohort is always at sea and could be collected as broodstock in case of a catastrophic event in freshwater

(e.g., a large contaminant spill) or in a hatchery (e.g., disease outbreak).

In evaluating the overall effect of hatchery supplementation to the extinction risk analysis presented by Fay *et al.* (2006), the potential negative effects of hatchery supplementation must also be carefully considered. The potential negative effects of hatchery supplementation include competition, artificial selection, inbreeding depression, and outbreeding depression.

Competition between hatchery-reared and wild Atlantic salmon is not well researched. Competition could occur between wild and hatchery juveniles (i.e., competition for food and space) or between wild and hatchery adults (i.e., competition for redd sites). To minimize competitive interactions that may occur between juveniles, fry are stocked at least 50 m from any known redd. At this time, competition for redd sites between wild and hatchery-reared salmon appears to be minimal, because there are substantial amounts of accessible yet unused spawning habitat throughout the range of the GOM DPS given the low abundance of returning adults in the GOM DPS.

Over the long term, artificial selection for the hatchery environment is considered a threat to survival. As pedigree lines become established, natural selection from fry to parr stage may no longer be incorporated into the life cycle if parr are not recovered in numbers sufficient for broodstock and spawning requirements. Over time, this process could result in a population that is well adapted to the artificial environment and poorly adapted to the natural environment; this form of artificial selection is widely know as domestication selection (Hey *et al.*, 2005).

Both inbreeding depression and outbreeding depression are widely accepted as potential risks in artificial propagation programs. As population sizes decrease, and the potential for mating related individuals increase, the threat of inbreeding in a population also increases. Inbreeding may also decrease overall fitness of a population (Spielman *et al.*, 2004; Lynch and O'Hely, 2001), reducing the long-term population viability and therefore inhibiting the success of restoration and recovery efforts. Of similar concern is the threat of outbreeding depression, and decreased fitness resulting from the mating of individuals from significantly genetically different populations.

Although actions are implemented to minimize these risks (see Bartron *et al.*, 2006), many risks cannot be fully removed from the captive propagation program, including potential risks that are currently unknown or cannot be managed against.

The conservation hatchery program for the GOM DPS Atlantic salmon in Maine is currently limited by capacity at CBNFH and GLNFH. Incorporating river-specific broodstocks for additional populations is currently limited by space and biosecurity constraints. Location of the six currently maintained river-specific broodstocks at a single facility (CBNFH) is thus considered a risk due to the possibility of a catastrophic event (such as disease, loss of electricity, or loss of funding for hatcheries), which could result in the loss of one or all of the river-specific broodstocks.

The positive and negative effects of hatchery supplementation have been reviewed by the National Research Council (NRC, 2004), Fay *et al.* (2006), and the Sustainable Ecosystems Institute (SEI, 2007). The review by SEI in 2007 was rigorous, specifically focusing on current hatchery operations, protocols, and practices and whether these practices are being implemented in the most scientifically sound manner to support recovery of Atlantic salmon in the GOM DPS. The overall recommendation from SEI with respect to the current river-specific program was that the river-specific integrity of the existing salmon populations should be retained, and there is no reason to depart from the river-specific nature of recovery and enhancement strategies without further extensive research on the fitness consequences of any potential alternative (SEI, 2007). While SEI was supportive overall of the current river-specific genetic maintenance program, it questioned the role the hatcheries play in increasing self-sustaining populations in the wild, and thus the contribution of the program to the recovery of the GOM DPS of Atlantic salmon. In short, SEI concluded that insufficient information is available to conclude whether supplementation significantly contributes to recovery objectives, aside from preservation of genetic diversity.

After considering both the positive and negative effects of hatchery supplementation, we conclude that the overall effect of the hatchery programs designed to conserve the genetic legacy of Atlantic salmon in Maine and lead to recovery is to reduce the extinction risk of the GOM DPS. Currently the GOM DPS is largely sustained by artificial propagation, therefore, artificial propagation through conservation hatcheries is essential for the persistence of the GOM DPS despite the risks from artificial propagation. The risks of competition between hatchery-reared and naturally-reared salmon appear to be minimal at this time, as do the risks of domestication selection, inbreeding depression, and outbreeding depression (Fay *et al.*, 2006), although the historical loss of diversity cannot be dismissed (Lage and Kornfield, 2006). Further, we consider the hatchery-dependent populations that are maintained at CBNFH and GLNFH essential for recovery of the GOM DPS because the hatchery populations contain a high proportion of the genetic diversity remaining in the GOM DPS.

However, we believe the current conservation hatchery program must be improved to further recovery of the GOM DPS. We recognize that SEI (2007) questioned the role the hatcheries play in increasing self-sustaining populations in the wild, and thus the contribution of the program to the recovery of the GOM DPS. In particular, the program should be expanded to include more assessment and evaluation of hatchery fish in the wild to understand how hatchery-origin fish can effectively contribute to increasing wild populations. Hatchery supplementation of the GOM DPS is currently important in maintaining genetic diversity levels. However, even with hatchery supplementation, the GOM DPS remains at extremely low levels (less than 150 naturally-reared spawning adults in the GOM DPS in 2006).

Aquaculture

Atlantic salmon that escape from farms and commercial hatcheries pose a threat to native Atlantic salmon populations (Naylor *et al.*, 2005) because captive-reared fish are selectively bred to promote behavioral and physiological attributes desirable in captivity (Hindar *et al.*, 1991; Utter *et al.*, 1993; Hard *et al.*, 2000); for further discussion of the threat of aquaculture see section 8.5.2 in Fay *et al.* (2006)). Experimental tests of genetic divergence between farmed and wild salmon indicate that farming generates rapid genetic change as a result of both intentional and unintentional selection in culture and that those changes alter important fitness-related traits (McGinnity *et al.*, 1997; Gross, 1998). Consequently, aquaculture fish are often less fit in the wild than naturally produced salmon (Fleming *et al.*, 2000). Annual invasions of escaped adult aquaculture salmon have the potential to disrupt local adaptations and reduce genetic diversity of wild populations (Fleming *et al.*, 2000). Bursts of immigration also disrupt genetic differentiation among wild Atlantic salmon stocks, especially when wild populations are small (Mork, 1991).

Natural selection may be able to purge wild populations of maladaptive traits but may be less able to if the intrusions occur year after year. Under this scenario, population fitness is likely to decrease as the selection from the artificial culture operation overrides wild selection (Hindar *et al.*, 1991; Fleming and Einum, 1997), a process called outbreeding depression. The threat of outbreeding depression is likely to be greater in North America where aquaculture salmon have been based, in part, on European Landcatch strain. To minimize these risks, the use of non-North American strains of salmon has been phased out in the United States.

In addition to genetic effects, escaped farmed salmon can disrupt redds of wild salmon, compete with wild salmon for food and habitat, transfer disease or parasites to wild salmon, and degrade benthic habitat (Windsor and Hutchinson, 1990; Saunders, 1991; Youngson *et al.*, 1993; Webb *et al.*, 1993; Clifford *et al.*, 1997). Farmed salmon have been documented to spawn successfully, but not always at the same time as wild salmon (Lura and Saegrov, 1991; Jonsson *et al.*, 1991; Webb *et al.*, 1991; Fleming *et al.*, 1996). Late spawning aquaculture fish could limit wild spawning success through redd superimposition. There has also been recent concern over potential interactions when wild adult salmon migrate past closely spaced cages, creating the potential for behavioral interactions, disease transfer, or interactions with predators (Lura and Saegrov, 1991; Crozier, 1993; Skaala and Hindar, 1997; Carr *et al.*, 1997; DFO, 1999). In Canada, the survival of wild postsmolts moving from Passamaquoddy Bay to the Bay of Fundy was inversely related to the density of aquaculture cages (DFO, 1999).

The development and expansion of Atlantic salmon aquaculture has occurred in the North Atlantic since the early 1970s. Production of farmed Atlantic salmon in 2003 was estimated at over 1.1 million tons (1.1 metric tons (mt)) worldwide, 761,752 tons (773,976 mt) in the North Atlantic, and 6,435 tons (6,538 mt) in Maine (ICES, 2004). The Maine Atlantic salmon aquaculture industry is concentrated in Cobscook Bay near Eastport, Maine. The industry in Canada, just across the border, is approximately twice the size of the Maine industry. Five freshwater commercial hatcheries in the United States have provided smolts to the sea cages and produce up to four million smolts per year.

Three primary broodstock lines have been used for farm production. The lines include fish from the Penobscot River, St. John River, and historically an industry strain from Scotland. The Scottish strain was imported into the United States in the early 1990s and is composed primarily of Norwegian strains, frequently referred to as Landcatch. In recent years, milt of Norwegian origin has been imported by the industry from Iceland (Baum, 1998). However, placement of reproductively viable non-North American origin Atlantic salmon into marine cages in the United States has been eliminated.

Escaped farmed salmon are known to enter Maine rivers. For example, at least 17 percent (14 of 83 fish) of the rod catch in the East Machias River were captive-reared adults in 1990. In addition to the frequency and magnitude of escape events that drive annual variability, returns of captive-reared adults to Maine rivers are influenced by the amount of production and proximity of rearing sites in adjacent bays. About 60 percent of commercial salmon production in Maine occurs at sites on Cobscook and Passamaquoddy Bays, into which the Dennys and St. Croix (not a part of the GOM DPS) Rivers flow; 35 percent on Machias Bay and the estuary of the Little River, within seven miles of the Machias and East Machias Rivers; and the remainder on the estuaries of the Pleasant and Narraguagus Rivers, or adjacent to Blue Hill Bay. The percentage of captive-reared fish in adult returns is highest in the St. Croix (not a part of the GOM DPS) and Dennys Rivers and lowest in the Penobscot River (less than 0.01 percent in the years 1994 to 2001), with the Narraguagus runs having low and sporadic proportions of captive-reared salmon.

A large escape event also occurred in 2005 when four marine salmon aquaculture sites in Western New Brunswick, Canada, were vandalized from early May through November 2005, resulting in approximately 136,000 escaped farmed salmon. Most escapees were unmarked 1SW salmon of similar size (2–5 kg). Escaped aquaculture-origin salmon from these vandalism events entered the Dennys River and possibly other Eastern Maine rivers in 2005. The Services and MDMR are cooperatively implementing a program to minimize genetic and ecological risks from this escape (Bean *et al.*, 2006).

Aquaculture escapees and resultant interactions with native stocks are expected to continue to occur within the range of the GOM DPS given the continued operation of farms. While recent containment protocols have greatly decreased the incidence of losses from hatcheries and pens, the risk of large escapes occurring is still significant. Escaped farmed fish are of great concern in Maine because, even at low numbers, they can represent a substantial portion of the returns to some rivers. Wild populations at low levels are particularly vulnerable to genetic intrusion or other disturbance caused by escapees (Hutchings, 1991; DFO, 1999).

Despite the concerns with aquaculture described above, recent advances in containment and marking of aquaculture fish limit the negative impacts of aquaculture fish with the GOM DPS. Permit conditions required by the Army Corps of Engineers (ACOE) and MDEP require genetic screening to ensure that only North American strain salmon are used in commercial aquaculture, require marking to facilitate tracing fish back to the source and cause of the escape, containment management plans and audits, and rigorous disease screening. Given these conditions, within Factor E we find the threat from aquaculture to the persistence of the GOM DPS to be secondary to the significant threat posed by low marine survival, described below. If these measures were no longer in place or were less protective, the threat from aquaculture would be much greater.

Low Marine Survival

Large changes in marine survival are known to have occurred recently. Marine survival rates since 1991 continue to be low for U.S. stocks of Atlantic salmon, (see section 8.5.3 of Fay *et al.* (2006)). Natural mortality in the marine environment can be attributed to four general sources: predation, starvation, disease/parasites, and abiotic factors. While our understanding of the marine ecology of Atlantic salmon has increased substantially in the past decade, the factors responsible for reduced marine survival remain unclear. In general, return rates for Atlantic salmon across North America have declined over the last 30 years (ICES 1998). Reported Atlantic salmon marine survival rates prior to the 1990s ranged from zero to twenty percent (Bley and Moring, 1988). For the period 2001 to 2005, 2SW return rates for wild Narraguagus River smolts ranged from 0.2 to 1.2 percent. Return rates for this same period for 2SW hatchery Penobscot River smolts ranged from 0.06 to 0.17 percent (ICES, 2006). Chaput *et al.* (2005) reported on the possibility of a phase (or regime) shift of productivity for Atlantic salmon in the Northwest Atlantic. Strong evidence is

presented to support a decrease in the recruit-per-spawner relationship for North American Atlantic salmon populations that likely occurred over several years in the late 1980s through early 1990s. The concept of phase shift has previously been documented and discussed for Pacific salmon populations (Beamish *et al.*, 1999). Chaput *et al.* (2005) did not speculate on the causes of this shift. Friedland *et al.* (2005) summarized numerous studies that suggest that climate mediates marine survival for Atlantic salmon as well as other fish species.

In summary, marine survival is critical to shaping recruitment patterns in Atlantic salmon and causing the subsequent low abundance of adult salmon; however, the mechanisms of the observed persistent decline in marine survival remain unknown. We find that low marine survival is a significant threat to the persistence of the GOM DPS. We conclude that low marine survival, dams and their inter-related effects (described in Factor A, above), and the inadequacy of existing regulatory mechanisms for dams (Factor D, above) are the most influential stressors negatively affecting the persistence of the GOM DPS.

Depleted Diadromous Communities

The ecological setting in which Maine Atlantic salmon evolved is considerably different than what exists today. Ecological changes that have occurred over the last 200 years are ubiquitous and span a wide array of spatial and temporal scales. Of particular concern for Atlantic salmon recovery efforts within the range of the GOM DPS is the dramatic decline observed in the diadromous fish community. At historic abundance levels, Fay *et al.* (2006) and Saunders *et al.* (2006) hypothesize that several of the co-evolved diadromous fishes may have provided substantial benefits to Atlantic salmon through at least four mechanisms: serving as an alternative prey source for salmon predators; serving as prey for salmon directly; depositing marine-derived nutrients in freshwater; and increasing substrate diversity of rivers. Following is a brief description of each mechanism.

Fay *et al.* (2006) and Saunders *et al.* (2006) hypothesized that the historically large populations of clupeids (i.e., members of the family Clupeidae, such as alewives, blueback herring, and American shad) likely provided a robust alternative forage resource (or prey buffer) for opportunistic native predators of salmon during a variety of events in the salmon's life history. First, pre-spawn adult alewives likely served as a prey buffer for migrating Atlantic salmon smolts. Evidence for this relationship includes significant spatial and temporal overlap of migrations, similar body size, numbers of alewives that exceeded salmon smolt populations by several orders of magnitude (Smith, 1898; Collette and Klein-MacPhee, 2002), and a higher caloric content per individual (Schulze, 1996); alewives were thus likely a substantial alternative prey resource (i.e., prey buffer) that protected salmon smolts from native predators such as cormorants, otters, ospreys, and bald eagles within sympatric migratory corridors (Mather, 1998; USASAC, 2004). Second, adult American shad likely provided a similar prey buffer to potential predation on Atlantic salmon adults by otters and seals. Pre-spawn adult shad would enter these same rivers and begin their upstream spawning migration at approximately the same time as adult salmon. Historically, shad runs were considerably larger than salmon runs (Atkins and Foster, 1869; Stevenson, 1898). Thus, native predators of medium to large size fish in the estuarine and lower river zones could have preyed on these 1.5 to 2.5 kg size fish readily. Third, juvenile shad and blueback herring may have represented a substantial prey buffer from potential predation on Atlantic salmon fry and parr by native opportunistic predators such as mergansers, herons, mink, and fallfish. Large populations of juvenile shad (and blueback herring, with similar life history and habitat preferences to shad) would have occupied main stem and larger tributary river reaches through much of the summer and early fall. Juvenile shad and herring would ultimately emigrate to the ocean, along with juvenile alewives from adjacent lacustrine habitats, in the late summer and fall. Recognizing that the range and migratory corridors of these juvenile clupeids would not be precisely sympatric with juvenile salmon habitat, there nonetheless would have been a substantial spatial overlap amongst the habitats and populations of these various juvenile fish stocks. Even in reaches where sympatric occupation by juvenile salmon and juvenile clupeids may have been low or absent, factors such as predator mobility and instinct driven energetic efficiency (i.e., optimal foraging theory) need to be considered since the opportunity for prey switching would have been much greater than today, and the opportunity for prey switching may produce stable predator-prey systems with coexistence of both prey and predator populations (Krivan, 1996).

At historical abundance levels, other diadromous species also represented significant supplemental foraging resources for salmon in sympatric habitats. In particular, anadromous rainbow smelt are known to be a favored spring prey item of Atlantic salmon kelts (a life stage after Atlantic salmon spawn; Cunjak *et al.*, 1998). A 1995 radio tag study found that Miramichi River (New Brunswick, Canada) kelts showed a net upstream movement shortly after ice break-up (Komadina-Douthwright *et al.*, 1997). This movement was concurrent with the onset of upstream migrations of rainbow smelt (Komadina-Douthwright *et al.*, 1997). In addition, Moore *et al.* (1995) suggested that the general availability of forage fishes shortly after ice break-up in the Miramichi could be critical to the rejuvenation and ultimate survival of kelts as they prepared to return to sea. Kelts surviving to become repeat spawners are especially important due to higher fecundity (Baum, 1997; NRC, 2004). The historical availability of anadromous rainbow smelt as potential kelt forage in lower river zones may have been important in sustaining the viability of this salmon life stage. Conversely, the broad declines in rainbow smelt populations may be partially responsible for the declining occurrence of repeat spawners in Maine's salmon rivers.

Historically, the upstream migrations of large populations of adult clupeids, sea lamprey and salmon themselves, provided a conduit for the import and deposition of biomass and nutrients of marine origin into freshwater environments. Mechanisms of direct deposition included discharge of urea, discharge of gametes on the spawning grounds, and deposition of post-spawn adult carcasses (Durbin *et al.*, 1979). Migrations and other movements of mobile predators and scavengers of adult carcasses likely resulted in further distribution of imported nutrients throughout the freshwater ecosystem. Conversely, juvenile outmigrants of these sea-run species represented a massive annual outflux of forage resources for Gulf of Maine predators, while also completing the cycle of importing base nutrients back to the ocean environment. These types of diffuse mutualism are only recently being recognized (Hay *et al.*, 2004). Sea lampreys also likely played a role in nutrient cycling. Lampreys prefer spawning habitat that is very similar (location and physical characteristics) to that used by spawning Atlantic salmon (Kircheis, 2004). Adult lampreys spawn in late spring, range in weight from 1 to

2 kg, and experience 100 percent post-spawning mortality on spawning grounds (semelparous). This results in the deposition of marine-origin nutrients at about the same time that salmon fry would be emerging from redds and beginning to occupy adjacent juvenile production habitats. These nutrients would likely have enhanced the primary production capability of these habitats for weeks or even months after initial deposition, and would gradually be transferred throughout the trophic structure of the ecosystem, including those components most important to juvenile salmon (e.g., macroinvertebrate production).

Sea lampreys likely provide an additional benefit to Atlantic salmon spawning activity in sympatric reaches. In constructing their nests, lamprey carry stones from other locations and deposit them centrally in a loose pile within riffle habitat and further utilize body scouring to clean silt off stones already at the site (Kircheis, 2004). Ultimately, a pile of silt-free stones as deep as 25 cm and as long as a meter is formed (Leim and Scott, 1966; Scott and Scott, 1988), into which the lamprey deposit their gametes. The stones preferred by lampreys are generally in the same size range as those preferred by spawning Atlantic salmon. Thus, lamprey nests can be attractive spawning sites for Atlantic salmon (Kircheis, 2004). Kircheis (2004) also notes the lamprey's silt-cleaning activities during nest construction that may improve the ''quality'' of the surrounding environment with respect to potential diversity and abundance of macroinvertebrates, a primary food item of juvenile salmon.

Thus, depleted diadromous fish communities have likely played an important role in the continued declines of the GOM DPS of Atlantic salmon. Conversely, if diadromous populations can be restored, the ecological functions those species confer may simultaneously be restored. In summary, within Factor E, we find the threat from depleted diadromous fish communities to the persistence of the GOM DPS to be secondary to the significant threat posed by low marine survival, described above.

Competition

Prior to 1800, the resident riverine fish communities in Maine were relatively simple, consisting of brook trout, cusk, white sucker, and a number of minnow species. Today, Atlantic salmon co-exist with a diverse array of nonnative resident fishes, including brown trout, largemouth bass, smallmouth bass, and northern pike (MDIFW, 2002). The range expansion of nonnative fishes is important, given evidence that niche shifts may follow the addition or removal of other competing species (Fausch, 1998). For example, in Newfoundland, Canada, where fish communities are simple, Atlantic salmon inhabit pools and lakes that are generally considered atypical habitats in systems where there are more complex fish communities (Gibson, 1993). Use of lacustrine (or lake) habitat, in particular, can increase smolt production (Matthews *et al.*, 1997). Conversely, if salmon are excluded from these habitats through competitive interactions, smolt production may suffer (Ryan, 1993). Even if salmon are not completely excluded from a given habitat type, they may select different, presumably sub-optimal, habitats in the presence of certain competitors (Fausch, 1998). Thus, competitive interactions may limit Atlantic salmon production through niche constriction (Hearn, 1987). The continued range expansion of nonnative species (e.g., smallmouth bass, brown trout, and rainbow trout) is of particular concern since these species often require similar resources as salmon and are therefore expected to be competitors for food and space (for a comprehensive discussion of the effects of competition on Atlantic salmon see section 8.3.3 of Fay *et al.* (2006)). In summary, within Factor E, we find the threat from competition to the persistence of the GOM DPS to be secondary to the significant threat posed by low marine survival, described above.

Climate Change

Global climate change may also affect thermal regimes within the range of the GOM DPS (see section 8.1.4 of Fay *et al.* (2006)). Within the range of the GOM DPS, spring runoff has become earlier, water content in snow pack for March and April has decreased, and the duration of river ice has become shorter (Dudley and Hodgkins, 2002). For Atlantic salmon specifically, Juanes *et al.* (2004) suggest that observed changes in adult run timing may be a response to global climate change. While some physiological changes at the individual level are quite predictable when changes in temperature are known, the interactions between individuals, populations, and species are impossible to predict at this time given we do not understand how or to what degree climate change may or may not affect the freshwater and marine environment of the GOM DPS. At this time we do not have enough information to determine whether climate change is a threat to the persistence of the GOM DPS.

In summary, of the threats described under Factor E, we find that low marine survival is a significant threat to the persistence of the GOM DPS given that marine survival is a vital component of Atlantic salmon demographics. Aquaculture, depleted diadromous communities, and competition (particularly with nonnative fish) are secondary threats to the continued existence of the GOM DPS; we do not have enough information at this time to evaluate how climate change may or may not affect the persistence of the GOM DPS. Artificial propagation poses risks to natural populations, as described in this proposed rule. However, given the low numbers of naturally-reared spawning adults in the GOM DPS, a carefully managed conservation hatchery program is essential to sustaining the GOM DPS.

Efforts Being Made to Protect the Species

Section 4(b)(1)(A) of the ESA requires the Secretary of Commerce to make listing determinations solely on the basis of the best scientific and commercial data available after taking into account efforts being made to protect a species. Therefore, in making a listing determination, we first assess a species' level of extinction risk and identify factors that have led to its decline. We then assess existing efforts being made to protect the species to determine if those measures ameliorate the risks.

In judging the efficacy of existing protective efforts, we rely on the joint NMFS-U.S. Fish and Wildlife Service (FWS) ''Policy for Evaluation of Conservation Efforts When Making Listing Decisions'' (''PECE;'' 68 FR 15100; March 28, 2003). PECE provides direction for the consideration of protective efforts identified in conservation agreements, conservation plans, management plans, or similar documents (developed by Federal agencies, state and local governments, Tribal governments, businesses, organizations, and individuals) that have not yet been implemented, or have been implemented but have not yet demonstrated effectiveness. The policy articulates several criteria for evaluating the certainty of implementation and effectiveness of protective efforts to aid in determining whether a species should be listed as threatened or endangered. Evaluations of the certainty an effort will be implemented include whether: the necessary resources (e.g., funding and staffing) are available; the requisite agreements have been

formalized such that the necessary authority and regulatory mechanisms are in place; there is a schedule for completion and evaluation of the stated objectives; and (for voluntary efforts) the necessary incentives are in place to ensure adequate participation. The evaluation of the certainty of an effort's effectiveness is made on the basis of whether the effort or plan: establishes specific conservation objectives; identifies the necessary steps to reduce threats or factors for decline; includes quantifiable performance measures for the monitoring of compliance and effectiveness; incorporates the principles of adaptive management; and is likely to improve the species' viability at the time of the listing determination.

PECE also notes several important caveats. Satisfaction of the above mentioned criteria for implementation and effectiveness establishes a given protective effort as a candidate for consideration, but does not mean that an effort will ultimately change the risk assessment. The policy stresses that just as listing determinations must be based on the viability of the species at the time of review, so they must be based on the state of protective efforts at the time of the listing determination. PECE does not provide explicit guidance on how protective efforts affecting only a portion of a species' range may affect a listing determination, other than to say that such efforts will be evaluated in the context of other efforts being made and the species' overall viability. There are circumstances where threats are so imminent, widespread, and/or complex that it may be impossible for any agreement or plan to include sufficient efforts to result in a determination that listing is not warranted.

In this section, we evaluate the Penobscot River Restoration Project (PRRP), perhaps the most significant of recent fish passage agreements, pursuant to PECE. The PRRP is the result of many years of negotiations between Pennsylvania Power and Light (PPL), U.S. Department of the Interior (i.e., USFWS, Bureau of Indian Affairs, National Park Service), Penobscot Indian Nation, the State of Maine (i.e., Maine State Planning Office, Maine Department of Inland Fisheries and Wildlife, and Maine Department of Marine Resources (MDMR)), and several non-governmental organizations (NGOs; Atlantic Salmon Federation, American Rivers, Trout Unlimited, and Natural Resources Council of Maine, among others). If implemented, the PRRP would lead to the removal of the two lowermost mainstem dams on the Penobscot River (Veazie and Great Works) and would decommission the Howland Dam and construct a nature-like fishway around it (dams with varying levels of fish passage would still exist upstream of these sites). This initiative would improve habitat accessibility for all diadromous species. There is a significant effort on behalf of the Parties and other Federal and non-Federal bodies to secure funds for the purchase, decommissioning, and removal of the dams. However, the certainty of funding and other necessary actions is not known at this time. We strongly support the PRRP; however, at this time it is not possible to state with certainty that this project will be fully implemented. This protective effort does not as yet provide sufficient certainty of implementation and effectiveness to counter the extinction risk assessment conclusion that the species is in danger of extinction throughout its range.

Finding

Regarding the petition to list the Kennebec population of Atlantic salmon, we find that the Kennebec River population is a part of the GOM DPS, based primarily on genetics, as described in this proposed rule. We have carefully considered the best scientific and commercial data available regarding the past, present and future threats faced by the GOM DPS of the Atlantic salmon. We find that listing the GOM DPS of Atlantic salmon, which includes the Kennebec River population, as endangered is warranted for the reasons described below.

The proposed GOM DPS is comprised of Atlantic salmon in larger river systems including the Androscoggin, Kennebec and Penobscot Rivers as well as the smaller coastal rivers (Narraguagus, Machias, Sheepscot, etc.) that were included in the DPS as listed in 2000 (65 FR 69459, November 17, 2000). There are extremely few naturally-reared spawning adult salmon present in the GOM DPS (117 in 2006). In 2006, 1,044 sea-run salmon were captured in the Penobscot River, representing approximately only ten percent of the CSE goals for the Penobscot River; however, the vast majority of these adult returns were stocked as smolts. With the addition of Atlantic salmon in the Penobscot and other large rivers to the GOM DPS, the demographic security is somewhat increased because populations that are geographically widespread are less likely to experience spatially correlated catastrophes. However, the numbers of naturally-reared spawning adults within the GOM DPS as currently proposed is still quite low and the majority of returning adults (whether naturally-reared or smolt-stocked) are found in the Penobscot River, despite the addition of other large rivers to the DPS. In 2006, only 15 adults returned to the Kennebec and 6 returned to the Androscoggin. The PVA generally shows that the GOM DPS is likely to continue to decline in terms of adult abundance and projections show that the GOM DPS is trending towards extinction.

The GOM DPS is sustained by a carefully-managed hatchery supplementation program. Hatchery supplementation is crucial to the continued existence of the GOM DPS, although we recognize that reliance on artificial propagation carries risks that cannot be completely avoided despite managers' best efforts. We have carefully examined both the positive and negative effects of hatchery supplementation. We have concluded that current hatchery supplementation practices reduce the risk of extinction of the GOM DPS. While we recognize that the conservation hatchery programs make a significant contribution to reducing the near term risk of extinction, they must continue to be improved. Although hatchery supplementation of the GOM DPS is currently important in maintaining genetic diversity levels, at this time, these programs have not been successful at recovering or maintaining wild, self-sustaining populations of Atlantic salmon. There is also the risk of catastrophic loss at either or both conservation hatchery facilities, despite managers' best efforts to reduce these risks.

Further, at the present time, there is no evidence to suggest that marine survival will increase in the near future. In short, without both conservation hatcheries continuing to operate and an increase in marine survival, the risk of extinction is quite high and would be even higher if and when broodstock goals for smolt production could not be met.

As described above, the demographic effects of the currently low marine survival on the GOM DPS are severe, dams limit the viability of salmon populations through numerous and sometimes synergistic ways (e.g., entrainment, water quality effects, fish community effects, among others), and the existing regulatory mechanisms for dams are inadequate. As a result, we find that Factor E (in particular) low marine survival, Factor A (in particular, dams), and Factor D (in particular, the inadequacy of existing regulatory mechanisms for dams) are the three most influential factors negatively

affecting the persistence of the GOM DPS.

We find that threats from reduced habitat complexity, reduced habitat connectivity, and poor water quality within Factor A; overutilization, disease, and predation (within Factor B), inadequacy of existing regulatory mechanisms for water withdrawals and water quality within Factor D; and aquaculture, depleted diadromous fish communities, and competition within Factor E to be secondary threats compared to dams (within Factor A), low marine survival (within Factor E) and the inadequacy of existing regulatory mechanisms for dams (within Factor D). At this time, we do not have enough information to determine whether climate change (within Factor E) is a threat to the persistence of the GOM DPS. Artificial propagation through conservation hatcheries (within Factor E) is vital to sustaining the GOM DPS at this time despite the risks from artificial propagation. As a result, we propose to list the GOM DPS of Atlantic salmon as endangered.

As discussed under Efforts Being Made to Protect the Species, we cannot rely on the PRRP to offset the threats to the GOM DPS from dams in this decision regarding listing the GOM DPS; we also recognize that implementation of the PRRP would not alleviate the effects of dams in place on any of the other rivers within the GOM DPS.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the ESA include recovery actions, requirements for Federal agencies to avoid jeopardizing the continued existence of the species, and prohibitions against taking the species, as defined in the ESA. Recognition through listing may improve public awareness and encourage conservation actions by Federal, state, and local agencies, private organizations, and individuals. The ESA provides for possible land acquisition and cooperation with the States and provides for recovery actions to be carried out for listed species. The requirement of Federal agencies to avoid jeopardy and the prohibitions against take are discussed below.

Section 7(a) of the ESA, as amended, requires Federal agencies to evaluate their actions with respect to any species that is listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the ESA are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us under the provisions of section 7(a)(2) of the ESA.

Several Federal agencies are expected to have involvement under section 7 of the ESA regarding the Atlantic salmon. The Environmental Protection Agency may be required to consult on its permitting oversight authority for the Clean Water Act and Clear Air Act. The ACOE may be required to consult on permits it issues under section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act. The FERC may be required to consult on licenses it issues for hydroelectric dams under the FPA. The Federal Highway Administration may be required to consult on transportation projects it authorizes, funds, or carries out.

ESA section 9(a) take prohibitions (16 U.S.C. 1538(a)(1)(B)) apply to all species listed as endangered. Those prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any wildlife species listed as endangered, except as provided in sections 6(g)(2) and 10 of the ESA. It is also illegal under ESA section 9 to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Section 11 of the ESA provides for civil and criminal penalties for violation of section 9 or of regulations issued under the ESA.

The ESA provides for the issuance of permits to authorize incidental take during the conduct of activities that may result in the take of threatened or endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in the course of otherwise lawful activities provided that certain criteria are met.

It is our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not likely constitute a violation of section 9 of the ESA. The intent of this policy is to increase public awareness of the effects of the listing on proposed and ongoing activities within a species' range. With the original listing of the Atlantic salmon in 2000, the Services published lists of activities that we believed were unlikely and likely to result in a violation of section 9 (65 FR 69459; November 17, 2000); we find that the activities identified in that listing decision continue to apply for the GOM DPS as proposed in this rule.

The Services believe that, based on the best available information, the following actions are unlikely to result in a violation of section 9:

(1) Possession of Atlantic salmon acquired lawfully by permit issued by the Services pursuant to section 10 of the ESA, or by the terms of an incidental take statement in a biological opinion pursuant to section 7 of the ESA;

(2) Federally approved projects that involve activities such as silviculture, agriculture, road construction, dam construction and operation, discharge of fill material, siting of marine cages for aquaculture, hatchery programs, and stream channelization or diversion for which consultation under section 7 of the ESA has been completed, and when such activity is conducted in accordance with any terms and conditions given by the Services in an incidental take statement in a biological opinion pursuant to section 7 of the ESA;

(3) Routine culture and assessment techniques, including the FWS' river-specific rehabilitation program at CBNFH; and

(4) Emergency responses to disease outbreaks.

Activities that the Services believe could result in violation of section 9 prohibitions against ''take'' of the Gulf of Maine DPS of anadromous Atlantic salmon include, but are not limited to, the following:

(1) Targeted recreational and commercial fishing, bycatch associated with commercial and recreational fisheries, and illegal harvest;

(2) The escapement of reproductively viable non-North American strain or non-North American hybrid Atlantic salmon in freshwater hatcheries within the DPS range;

(3) The escapement from marine cages or freshwater hatcheries of domesticated salmon such that they are found entering or existing in rivers within the DPS range;

(4) Failure to adopt and implement fish health practices that adequately protect against the introduction and spread of disease;

(5) Siting and/or operating aquaculture facilities in a manner that negatively impacts water quality and/or benthic habitat;

(6) Discharging (point and non-point sources) or dumping toxic chemicals, silt, fertilizers, pesticides, heavy metals, oil, organic wastes or other pollutants into waters supporting the DPS;

(7) Blocking migration routes;

(8) Destruction and/or alteration of the species' habitat (e.g., instream dredging, rock removal, channelization, riparian and in-river damage due to livestock, discharge of fill material, operation of heavy equipment within the stream channel, manipulation of river flow);

(9) Violations of discharge or water withdrawal permits that are protective of the DPS and its habitat;

(10) Pesticide or herbicide applications in compliance with or in violation of label restrictions; and

(11) Unauthorized collecting or handling of the species (permits to conduct these activities are available for purposes of scientific research or to enhance the propagation or survival of the DPS).

Other activities not identified here will be reviewed on a case-by-case basis to determine if violation of section 9 of the ESA may be likely to result from such activities. We do not consider these lists to be exhaustive and provide them as information to the public.

Critical Habitat

Section 4(b)(2) of the ESA requires us to designate critical habitat for threatened and endangered species ''on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat.'' This section grants the Secretary of the Interior or of Commerce discretion to exclude an area from critical habitat if he determines ''the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat.'' The Secretary may not exclude areas if exclusion ''will result in the extinction of the species.'' In addition, the Secretary may not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan under Section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such a plan provides a benefit to the species for which critical habitat is proposed for designation (see section 318(a)(3) of the National Defense Authorization Act, Public Law 108–136).

The ESA defines critical habitat under section 3(5)(A) as: ''(i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species.''

Once critical habitat is designated, Section 7 of the ESA requires Federal agencies to ensure they do not fund, authorize, or carry out any actions that will destroy or adversely modify that habitat. This requirement is in addition to the other principal section 7 requirement that Federal agencies ensure their actions do not jeopardize the continued existence of listed species.

The Services jointly listed the GOM DPS as endangered in 2000 but have yet to designate critical habitat. Critical habitat will be proposed in a separate rulemaking.

Peer Review

In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review, establishing minimum peer review standards, a transparent process for public disclosure of peer review planning, and opportunities for public participation. The OMB Bulletin, implemented under the Information Quality Act (Public Law 106–554), is intended to enhance the quality and credibility of the Federal government's scientific information, and applies to influential or highly influential scientific information disseminated on or after June 16, 2005. We obtained independent peer review of the scientific information compiled in the 2006 Status Review (Fay *et al.*, 2006) that supports this proposal to designate list the GOM DPS of Atlantic salmon as endangered.

On July 1, 1994, the Services published a policy for peer review of scientific data (59 FR 34270). The intent of the peer review policy is to ensure that listings are based on the best scientific and commercial data available. Prior to a final listing, we will solicit the expert opinions of three qualified specialists, concurrent with the public comment period. Independent specialists will be selected from the academic and scientific community, Federal and state agencies, and the private sector.

References

A complete list of the references used in this proposed rule is available upon request (see **ADDRESSES**).

Classification

National Environmental Policy Act

Proposed ESA listing decisions are exempt from the requirement to prepare an environmental assessment (EA) or environmental impact statement (EIS) under the National Environmental Policy Act of 1969 (NEPA) (NOAA Administrative Order 216–6.03(e)(1); *Pacific Legal Foundation* v. *Andrus*, 675 F. 2d 825 (6th Cir. 1981)). Thus, we have determined that the proposed listing determination for the GOM DPS of Atlantic salmon described in this notice is exempt from the requirements of NEPA.

Information Quality Act

The Information Quality Act directed the Office of Management and Budget to issue government wide guidelines that ''provide policy and procedural guidance to federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by federal agencies.'' Under the NOAA guidelines, this action is considered a Natural Resource Plan. It is a composite of several types of information from a variety of sources. Compliance of this document with NOAA guidelines is evaluated below.

- *Utility:* The information disseminated is intended to describe a management action and the impacts of that action. The information is intended to be useful to state and Federal agencies, non-governmental organizations, industry groups and other interested parties so they can understand the management action, its effects, and its justification
- *Integrity:* No confidential data were used in the analysis of the impacts associated with this document. All information considered in this document and used to analyze the proposed action, is considered public information.
- *Objectivity:* The NOAA Information Quality Guidelines standards for Natural Resource Plans state that plans be presented in an accurate, clear, complete, and unbiased manner. NMFS

and USFWS strive to draft and present proposed management measures in a clear and easily understandable manner with detailed descriptions that explain the decision making process and the implications of management measures on natural resources in the Gulf of Maine and the public. This document was reviewed by a variety of biologists, policy analysts, and attorneys from NMFS and USFWS.

Administrative Procedure Act

The Federal Administrative Procedure Act (APA) establishes procedural requirements applicable to informal rulemaking by Federal agencies. The purpose of the APA is to ensure public access to the Federal rulemaking process and to give the public notice and an opportunity to comment before the agency promulgates new regulations.

Coastal Zone Management Act

Section 307(c)(1) of the Federal Coastal Zone Management Act of 1972 requires that all Federal activities that affect the any land or water use or natural resource of the coastal zone be consistent with approved state coastal zone management programs to the maximum extent practicable. NMFS has determined that this action is consistent to the maximum extent practicable with the enforceable policies of approved Coastal Zone Management Programs of Maine. Letters documenting NMFS' determination, along with the draft environmental assessment and proposed rule, were sent to the coastal zone management program office in Maine. A list of the specific state contacts and a copy of the letters are available upon request.

Executive Order (E.O.) 13132 Federalism

E.O. 13132, otherwise known as the Federalism E.O., was signed by President Clinton on August 4, 1999, and published in the **Federal Register** on August 10, 1999 (64 FR 43255). This E.O. is intended to guide Federal agencies in the formulation and implementation of ''policies that have federal implications.'' Such policies are regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. E.O. 13132 requires Federal agencies to have a process to ensure meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications. A Federal summary impact statement is also required for rules that have federalism implications. Pursuant to E.O. 13132, the Assistant Secretary for Legislative and Intergovernmental Affairs will provide notice of the proposed action and request comments from the appropriate official(s) in Maine.

Environmental Justice

Executive Order 12898 requires that Federal actions address environmental justice in decision-making process. In particular, the environmental effects of the actions should not have a disproportionate effect on minority and low-income communities. The proposed listing determination is not expected to have a disproportionate effect on minority or low-income communities.

E.O. 12866, Regulatory Flexibility Act, and Paperwork Reduction Act

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts shall not be considered when assessing the status of a species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. In addition, this rule is exempt from review under E.O.12866. This proposed rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

E.O. 13084–Consultation and Coordination with Indian Tribal Governments

E.O. 13084 requires that, if we issue a regulation that significantly or uniquely affects the communities of Indian tribal governments and imposes substantial direct compliance costs on those communities, we consult with those governments or the Federal government must provide the funds necessary to pay the direct compliance costs incurred by the tribal governments. This proposed rule does not impose substantial direct compliance costs on the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this proposed rule. Nonetheless, we intend to inform potentially affected tribal governments and to solicit their input on the proposed rule. We will continue to give careful consideration to all written and oral comments received on the proposed rule and will continue our coordination and discussions with interested tribes as we move forward toward a final rule.

List of Subjects

50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

50 CFR Part 224

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

Dated: August 27, 2008.

James W. Balsiger,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

August 20, 2008.

Kenneth Stansell,

Acting Director, U.S. Fish and Wildlife Service.

For the reasons set out in the preamble, 50 CFR parts 17 and 224 are proposed to be amended as follows:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. In § 17.11(h) revise the entry for ''Salmon, Atlantic'', which is in alphabetical order under FISHES, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

FISHES

Species		Historic Range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
Salmon, Atlantic, Gulf of Maine	*Salmo salar*	U.S.A., Canada, Greenland, western Europe.	U.S.A., ME, Gulf of Maine Distinct Population Segment. Includes all anadromous Atlantic salmon whose freshwater range occurs in the watersheds from the Androscoggin northward along the Maine coast to the Dennys River, including all associated conservation hatchery populations used to supplement natural populations; currently, such populations are maintained at Green Lake and Craig Brook National Fish Hatcheries. Excluded are those salmon raised in commercial hatcheries for aquaculture.	E		NA	NA
*	*	*	*	*	*	*	

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

3. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

4. Amend the table in § 224.101, by revising the entry for ''Atlantic salmon'' in the table in § 224.101(a) to read as follows:

§ 224.101 Enumeration of endangered marine and anadromous species.

* * * * *

(a) *Marine and anadromous fish.*

* * *

Species[1]		Where Listed	Citation(s) for Listing Determination(s)	Citation(s) for Critical Habitat Designation(s)
Common name	Scientific name			
*	*	*	*	* * *
Gulf of Maine Atlantic salmon	*Salmo salar*	U.S.A., ME, Gulf of Maine Distinct Population Segment. Includes all anadromous Atlantic salmon whose freshwater range occurs in the watersheds from the Androscoggin northward along the Maine coast to the Dennys River, including all associated conservation hatchery populations used to supplement natural populations; currently, such populations are maintained at Green Lake and Craig Brook National Fish Hatcheries. Excluded are those salmon raised in commercial hatcheries for aquaculture.	65 FR 69469; November 17, 2000 [INSERT FR CITATION WHEN PUBLISHED AS A FINAL RULE]	NA
*	*	*	*	* * *

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[FR Doc. E8–20412 Filed 8–28–08; 4:15 pm]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 73, No. 171

Wednesday, September 3, 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

Cooperative State Research, Education, and Extension Service

Notice of Solicitation for Membership to the Forestry Research Advisory Council

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

ACTION: Notice of solicitation for membership.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 U.S.C. app), the United States Department of Agriculture (USDA) announces solicitation for nominations to fill twelve vacancies on the Forestry Research Advisory Council. The Council membership is appointed with staggered terms of one, two, and three years. Nominations for a three-year appointment for all twelve positions are sought.

DATES: Nominations must be received on or before October 10, 2008.

ADDRESSES: The nominee's name, resume, and completed Form AD–755 must be sent to the Office of the Forestry Research Advisory Council; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 3213 Waterfront Center; 800 9th Street, SW., Washington, DC 20024 for express mail or overnight courier service. Nominations sent via the U.S. Postal Service must be sent to the following address: Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Office of the Forestry Research Advisory Council; Mail Stop 2210; 1400 Independence Avenue, SW., Washington, DC 20250–2210.

FOR FURTHER INFORMATION CONTACT: Catalino A. Blanche, Designated Federal Officer, Forestry Research Advisory Council; Office of the Forestry Research Advisory Council; telephone: (202) 401–4190; fax: (202) 401–1706; e-mail: *cblanche@csrees.usda.gov*, or contact Daina D. Apple, Senior Staff Assistant, Research and Development, Forest Service, U.S. Department of Agriculture; telephone: (202) 205–1452; fax: (202) 205–1530; e-mail: *dapple@fs.fed.us*.

SUPPLEMENTARY INFORMATION: The Forestry Research Advisory Council was established to provide advice to the Secretary of Agriculture on efficiently accomplishing the purposes of the McIntire-Stennis Act of 1962 (16 U.S.C. 582a, *et seq.*). The Council also provides advice related to the Forest Service research program, authorized by the Forest and Rangeland Resources Research Act of 1978 (Pub. L. 95–307, 92 Stat. 353, as amended, 16 U.S.C. 1600 (note)). The Council is composed of 20 voting members from the following membership categories:

- Federal and State agencies concerned with developing and utilizing the Nation's forest resources which includes the National Forest System and Forest and Range Experiment Stations leaders, Forest Service;
- The forest industries;
- The forestry schools of the State certified eligible institutions and State agricultural experiment stations; and
- Volunteer public groups concerned with forests and related natural resources.

Nominees will be carefully reviewed for their broad expertise, leadership, and relevancy to a membership category. Nominations for one individual who fits several of the categories or for more than one person who fits one category will be accepted. Please indicate the specific membership category for each nominee.

Each nominee must complete Form AD–755, Advisory Committee Membership Background Information (which can be obtained from the contact persons above or from the following Web site: *http://www.ree.usda.gov/nareeeab/downloads/forms/AD–755.pdf*). All nominations will be vetted before selection. Appointments to the Forestry Research Advisory Council will be made by the Secretary of Agriculture. Applicants are strongly encouraged to submit nominations via overnight mail or delivery service to ensure timely receipt by the USDA.

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

Gale Buchanan,

Under Secretary, Research, Education, and Economics.

[FR Doc. E8–20317 Filed 9–2–08; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Assessment of Fees for Dairy Import Licenses for the 2009 Tariff-Rate Import Quota Year

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces that the fee to be charged for the 2009 tariff-rate quota (TRQ) year for each license issued to a person or firm by the Department of Agriculture authorizing the importation of certain dairy articles, which are subject to tariff-rate quotas set forth in the Harmonized Tariff Schedule (HTS) of the United States, will be $150.00 per license.

DATES: *Effective Date:* January 1, 2009.

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 Dairy Tariff-Rate Import Quota Licensing Regulation promulgated by the Department of Agriculture and codified at 7 CFR 6.20–6.37 provides for the issuance of licenses to import certain dairy articles that are subject to TRQs set forth in the HTS. Those dairy articles may only be entered into the United States at the in-quota TRQ tariff rates by or 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 use of licenses by the license holder to import dairy articles is monitored by the Daiiy Import Licensing Program, Import and

Trade Support Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture, and the U.S. Customs and Border Protection, U.S. Department of Homeland Security.

The regulation at 7 CFR 6.33(a) provides that a fee will be charged for each license issued to a person or firm by the Licensing Authority in order to reimburse the Department of Agriculture for the costs of administering the licensing system under this regulation.

The regulation at 7 CFR 6.33(a) also provides that the Licensing Authority will announce the annual fee for each license and that such fee will be set out in a notice to be published in the **Federal Register**. Accordingly, this notice sets out the fee for the licenses to be issued for the 2009 calendar year.

Notice

The total cost to the Department of Agriculture of administering the licensing system for 2009 has been estimated to be $360,000, and the estimated number of licenses expected to be issued is 2,400. Of the total cost, $235,000 represents staff and supervisory costs directly related to administering the licensing system, and $125,000 represents other miscellaneous costs, including travel, postage, publications, forms, Internet software development, and ADP system contractors.

Accordingly, notice is hereby given that the fee for each license issued to a person or firm for the 2009 calendar year, in accordance with 7 CFR 6.33, will be $150 per license.

Issued at Washington, DC the 9th day of July, 2008.

Ronald Lord,

Licensing Authority.

[FR Doc. E8–20133 Filed 9–2–08; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Meeting of the Advisory Committee on Emerging Markets

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the next meeting of the Advisory Committee on Emerging Markets will be held on September 10–11, 2008. The role of the committee is to provide information and advice, based upon knowledge and expertise of the members, useful to the U.S. Department of Agriculture (USDA) in implementing the Emerging Markets Program. The committee also advises USDA on the involvement of the U.S. private sector in cooperative work with emerging markets in food and rural business systems, and reviews proposals submitted to the Program.

DATES: The meeting will convene on September 10, 2008, from 9:30 a.m. to 5:30 p.m., and on September 11, 2008, from 9:30 a.m. to 1:30 p.m.

ADDRESSES: The meeting will be held on the 4th Floor, Room 411 Portals Building, 1250 Maryland Avenue, SW., Washington, DC 20024. Please submit comments by e-mail to *Nancy.Hirschhorn@fas.usda.gov* or by fax to (202) 690–0193. Persons with disabilities who require an alternative means of communication of information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TDD).

FOR FURTHER INFORMATION CONTACT: Nancy Hirschhorn by e-mail at *emo@fas.usda.gov* or by telephone (202) 720–6896.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to review and discuss those proposals submitted for participation in the fiscal year 2009 Emerging Markets Program, which qualify for finding from the program. The meeting is open to the public and members of the public may provide comments, but they should not make any oral comments at the meeting unless invited to do so by the co-chairpersons. The proposals will be posted on the Federal Advisory Committees Database at *http://fido.gov/facadatabase/public.asp.*

Dated: August 21, 2008.

Michael W. Yost,

Administrator, Foreign Agricultural Service.

[FR Doc. E8–20134 Filed 9–2–08; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Proposed New Fee Sites and Fee Increase at Existing Fee Sites; Federal Lands Recreation Enhancement Act (Title VIII, Pub. L. 108–447)

AGENCY: Fremont-Winema National Forests, USDA Forest Service.

ACTION: Notice of proposal to implement camping fees at full service campgrounds, and to increase camp fees at existing fee sites.

SUMMARY: The Fremont-Winema National Forests are planning to start charging fees at ten recreation campground sites, and increase camp fees at three existing fee sites and five recreation cabin rentals. The Forest is committed to responsibly serving the public by efficiently operating and, when necessary, modifying the services to ensure developed recreation sites are managed to health and safety standards, and provide recreation opportunities strategically across the Forests. As demographics change and new challenges are presented, it is the Forest's responsibility to respond and ensure that appropriate recreation services and facilities are available to the public. Fees are assessed based on the level of amenities and services provided, cost of operation and maintenance, market assessment and public comment. The fees listed are only proposed and will be determined upon further analysis and public comment. Funds from fees would be used for the continued operation and maintenance of these recreation sites.

Aspen Cabin, Bald Butte Lookout, Currier Guard Station, Drake Peak Lookout and Hager Mountain Lookout will continue to be available for overnight rental. The facilities are currently available for rent at either $25 or $30 per night. A financial analysis is being completed to determine the appropriate rental fee to cover operating expenses. Future fees may range between $40 and $50 per night. Lookout and forest cabin rentals offer a unique experience and are a widely popular offering on National Forests. Fees would continue to help protect and maintain lookout and cabin rentals and their historic integrity.

The fee structure at Digit Point Campground is proposed to change from the required $10.00 per campsite plus $5.00 for an extra vehicle for overnight use to $12.00 per campsite plus $5.00 for an extra vehicle. A fee of $5.00 per campsite is proposed when the water system is no longer active, primarily in the spring and fall.

The fee structure at Williamson River Campground is proposed to change from $6.00 per campsite plus $2.00 for an extra vehicle for overnight use to $10.00 per campsite plus $4.00 for an extra vehicle.

The fee structure at East Bay Campground is proposed to change from $8.00 per campsite plus $2.00 for an extra vehicle for overnight use to $10.00 per campsite plus $4.00 for an extra vehicle.

Campbell, Deadhorse, Cottonwood, Dog Lake, Lofton, Marster Springs, Silver Creek Marsh (campground and

trailhead) and Thompson Reservoir Campgrounds are currently free full service campground sites. A financial analysis is being completed to determine appropriate fee rates. The proposed fee would be used to help maintain these campgrounds and is proposed to be between $6 and $8 a campsite, and $2.00 for an additional vehicle.

Walt Haring Snow Park is currently a free full service campground with a recreation vehicle dump station. A financial analysis is being completed to determine appropriate fee rates. The proposed fee would be used to help maintain this campground and is proposed to be between $6 and $8 a campsite. A fee of $5.00 is also proposed for use of the recreation vehicle dump station. Recreation fees would be reinvested in campground and cabin facilities where a fee is charged.

DATES: New fees would begin after April 2009.

ADDRESSES: Karen Shimamoto, Forest Supervisor, Fremont-Winema National Forests, 2819 Dahlia, Klamath Falls, Oregon 97601.

FOR FURTHER INFORMATION CONTACT: Rich Kehr, Recreation Fee Coordinator, 541–883–6722. Information about proposed fee changes can also be found on the Fremont-Winema National Forests Web site: *http://www.fs.fed.us/r6/willamette/recreation/index.html.*

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established. Once public involvement is complete, these new fees will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation. People wanting to rent Aspen Cabin, Bald Butte Lookout, Currier Guard Station, Drake Peak Lookout and Hager Mountain Lookout need to do so through the National Recreation Reservation Service, at *http://www.reserveamerica.com* or by calling 1–877–444–6777.

Dated: August 20, 2008.

Karen Shimamoto,

Forest Supervisor, Fremont-Winema National Forests.

[FR Doc. E8–20215 Filed 9–2–08; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Associated Electric Cooperative Incorporated; Notice of Intent To Hold Public Scoping Meeting and Prepare an Environmental Assessment

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of intent to hold public scoping meeting and prepare an environmental assessment (EA).

SUMMARY: The Rural Utilities Service (RUS), an agency delivering the U.S. Department of Agriculture's Rural Development Utilities Programs, hereinafter referred to as Rural Development and/or Agency, intends to hold a public scoping meeting and prepare an Environmental Assessment (EA) in connection with potential impacts related to projects proposed by Associated Electric Cooperative, Inc. (AECI) of Springfield, Missouri. The proposal consists of the construction of a new 540-megawatt gas-fired combustion combined-cycle generation unit at the existing Chouteau Power Plant, a new substation approximately two miles east of the existing plant, a 161–kV transmission line from the existing plant to the new substation, and a single circuit 345–kV line from the new substation to the existing Grand River Dam Authority (GRDA) Coal-Fired Power Plant in Mayes County, Oklahoma. AECI is requesting financing assistance from the Agency for the proposed action.

DATES: The Agency will conduct a scoping meeting in an open house format seeking the input of the public and other interested parties. The meeting will be held from 6 p.m. until 8 p.m., on September 16, 2008.

ADDRESSES: The September 16, 2008 meeting will be held at the Mid America Expo Center, Mid America Industrial Park, Pryor, Oklahoma 74361. An Alternatives Report, prepared by Associated Electric Cooperative, Inc., will be available at the public scoping meetings, at the Agency's address provided in this notice, at the Agency's Web site: *http://www.usda.gov/rus/water/ees/ea.htm*, at Associated Electric Cooperative, Inc., 211 South Golden, Springfield, Missouri 65801 and at the: Pryor Public Library, 505 E Graham, Pryor, OK 74361, Phone: (918) 825–0777.

FOR FURTHER INFORMATION CONTACT: Stephanie Strength, Environmental Protection Specialist, USDA Rural Development, Utilities Programs, Engineering and Environmental Staff, 1400 Independence Avenue, SW., Stop 1571, Washington, DC 20250–1571, or e-mail *stephanie.strength@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION: Associated Electric Cooperative, Inc. proposes to construct a new 540-megawatt gas-fired combustion combined-cycle generation unit at the existing Chouteau Power Plant in Mayes County, Oklahoma with an in-service date of early 2011. The proposed 540 MW generating project will be connected to a new 161/345-kV substation that will serve both the existing and proposed generating facilities. This substation will be located approximately two miles east of the Chouteau Power Plant on 16.7 acres. A single circuit 161–kV transmission line would be constructed from the existing Chouteau Power Plant to the new 345/161–kV substation and a single circuit 345–kV line will be constructed from the new substation to the existing Grand River Dam Authority (GRDA) Coal-Fired Power Plant. Government agencies, private organizations, and the public are invited to participate in the planning and analysis of the proposed project. Representatives from the Agency and Associated Electric Cooperative, Inc. will be available at the scoping meeting to discuss the environmental review process, describe the proposal, discuss the scope of environmental issues to be considered, answer questions, and accept comments. Comments regarding the proposed action may be submitted (orally or in writing) at the public scoping meetings or in writing for receipt no later than October 16, 2008 to the Agency at the address provided in this notice.

From information provided in the Alternatives Report, input that may be provided by government agencies, private organizations, and the public, Associated Electric Cooperative, Inc. will prepare an environmental analysis to be submitted to the Agency for review. The Agency will review the environmental analysis to determine the significance of the impacts of the proposal and if acceptable will adopt it as its environmental assessment (EA) of the proposal. The Agency's EA would be available for review and comment for 30 days. Should the Agency determine, based on the EA for the proposal, that impacts associated with the construction and operation of the proposal would not have a significant environmental impact, it will prepare a finding of no significant impact (FONSI). Public notification of a FONSI would be published in the **Federal Register** and in newspapers with circulation in the proposal area.

Any final action by the Agency related to the proposed project will be subject to, and contingent upon, compliance with environmental review requirements as prescribed by the Agency's environmental policies and procedures (7 CFR part 1794).

Dated: August 28, 2008.

Mark S. Plank,

Director, Engineering and Environmental Staff, USDA/Rural Development/Utilities Programs.

[FR Doc. E8–20418 Filed 9–2–08; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Brazos Electric Power Cooperative, Inc.; Notice of Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: The Rural Utilities Service (RUS), an agency delivering the United States Department of Agriculture (USDA) Rural Development Utilities Programs, hereinafter referred to as Rural Development or the agency, has made a finding of no significant impact (FONSI) in connection with the addition and operation of a second 600 megawatt combined-cycle combustion turbine generation facility proposed by Brazos Electric Power Cooperative (Brazos), of Waco, Texas.

ADDRESSES: The FONSI is available for public review at USDA Rural Development, 1400 Independence Avenue, SW., Washington, DC 20250–1571; and at Brazos Electric, 2404 LaSalle Avenue, Waco, Texas 76702–2585. To obtain copies of the FONSI or for further information, contact: Dennis E. Rankin, Environmental Protection Specialist, USDA Rural Development, Utilities Programs, 1400 Independence Avenue, SW., Stop 1571, Washington, DC 20250–1571, Telephone: (202) 720–1953 or e-mail: *dennis.rankin@wdc.usda.gov*; or David McDaniel, Brazos Electric, 2404 LaSalle Avenue, Waco, Texas 76702–2585, Telephone: (254) 750–6324 or e-mail: *dmcdaniel@brazoselectric.com*.

SUPPLEMENTARY INFORMATION: Brazos is proposing to construct a second 600 MW gas-fired combined-cycle electric generation station adjacent to Brazos' existing generation station located at Henderson Ranch Road near the Joplin Community in Jack County, Texas. The project will consist of two combustion turbines and heat recovery steam generators and one steam turbine with a water-cooled steam surface condenser.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal environmental laws and regulations and completion of environmental review procedures as prescribed by 7 CFR part 1794, Environmental Policies and Procedures.

Dated: August 27, 2008.

James R. Newby,

Assistant Administrator, Electric Programs, Rural Utilities Programs.

[FR Doc. E8–20369 Filed 9–2–08; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

Docket 47–2008

Foreign–Trade Zone 189 Kent/Ottawa/Muskegon Counties, Michigan, Application for Subzone, Wolverine World Wide, Inc. (Footwear and Apparel Distribution)

An application has been submitted to the Foreign–Trade Zones Board (the Board) by the Kent–Ottawa-Muskegon Foreign Trade Zone Authority, grantee of FTZ 189, requesting special–purpose subzone status for the footwear and apparel distribution facilities of Wolverine World Wide, Inc. (Wolverine), located in Rockford, Cedar Springs and Howard City, Michigan. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 25, 2008.

The proposed subzone would include Wolverine's facilities at 3 sites located within the Grand Rapids, Michigan port of entry area: *Site 1* (265 acres) - 9341 Courtland Drive, in Rockford; *Site 2* (19 acres) - 660 West Street S NE, in Cedar Springs; and, *Site 3* (26 acres) - 214 East Washburn Street, in Howard City. Site 1 is owned by Wolverine while sites 2 and 3 are leased. The facilities are used for warehousing and distribution of both foreign–origin and domestic footwear, apparel and gear for both the U.S. market and export. The application states that all textile and apparel products classified under Textile Import Quota categories would be admitted to the proposed subzone under domestic (duty–paid) status (19 CFR Sec. 146.41). FTZ procedures would be used to help support Wolverine's Michigan–based import and distribution activity.

FTZ procedures would exempt Wolverine from Customs duty payments on foreign products that are re–exported. On domestic sales, duty payments would be deferred until the foreign merchandise is shipped from the facilities and entered for consumption. The company would also realize significant logistical benefits related to the use of direct delivery and weekly customs entry procedures. The application indicates that the savings from the use of FTZ procedures would help improve the company's international competitiveness and help facilitate the company's plans to grow their export market.

In accordance with the Board's regulations, Christopher Kemp of the FTZ staff is designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 3, 2008. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 17, 2008).

A copy of the application and accompanying exhibits will be available at each of the following addresses: U.S. Department of Commerce Export Assistance Center, 401 West Fulton Street, Suite 349C, Grand Rapids, MI 49504; and, Office of the Executive Secretary, Foreign–Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Ave, NW, Washington, D.C. 20230. For further information contact Christopher Kemp at christopher__kemp@ita.doc.gov or (202) 482–0862.

Dated: August 25, 2008.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8–20413 Filed 9–2–08; 8:45 am]

Billing Code: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–351–828)

Certain Hot–Rolled, Flat–Rolled Carbon Quality Steel Products from Brazil: Preliminary Notice of Intent to Rescind Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from Nucor Corporation, a domestic

interested party (''Nucor''), the Department of Commerce (''the Department'') initiated an administrative review of the antidumping duty order on certain hot–rolled, flat–rolled carbon quality steel products (''hot rolled steel'') from Brazil. This review covers two manufacturer/exporters of the subject merchandise, Companhia Siderurgica Nacional (''CSN'') and Companhia Siderurgica de Tubarao (''CST''), and covers the period March 1, 2007, through February 29, 2008. The Department intends to rescind this review after determining that the parties subject to this review did not have entries during the period of review (''POR'') upon which to assess antidumping duties.

EFFECTIVE DATE: September 3, 2008.

FOR FURTHER INFORMATION CONTACT: John Drury or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0195 or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION: The Department published an antidumping duty order on hot rolled steel from Brazil on March 12, 2002. *See Antidumping Duty Order: Certain Hot–Rolled Flat–Rolled Carbon Quality Steel Products from Brazil*, 67 FR 11093 (March 12, 2002). The Department published a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty order for the period March 1, 2007, through February 29, 2008, on March 3, 2008. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 73 FR 11389 (March 3, 2008). Nucor requested that the Department conduct an administrative review of sales of merchandise covered by the order by CSN and CST on March 31, 2008. In response to the request from Nucor, the Department published the initiation of the antidumping duty administrative review on hot rolled steel from Brazil on April 25, 2008, pursuant to section 751(a) of the Tariff Act of 1930, as amended (''the Act''). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 73 FR 22337 (April 25, 2008).

On April 29, 2008, CSN submitted a letter to the Department stating that it had no shipments of hot rolled steel to the United States during the POR. On May 12, 2008, CST submitted a letter to the Department stating that it had no shipments of hot rolled steel to the United States during the POR. The Department issued a ''No Shipment Inquiry'' to U.S. Customs and Border Protection (''CBP'') on June 3, 2008, to confirm that there were no shipments or entries of hot rolled steel from Brazil exported by CSN and CST during the POR of the instant administrative review. CBP only responds to the Department's inquiry when CBP finds that there have been shipments. CBP did not respond to the Department's inquiry, and no party submitted comments. Based on this information, on June 24, 2008, the Department determined that neither CSN nor CST had any shipments or entries of hot rolled steel from Brazil during the review period. *See* Memorandum to the File, through Angelica Mendoza, Program Manager, from John Drury, Senior Case Analyst: Companhia Siderurgica Nacional (CSN) and Companhia Siderurgica de Tubarao (CST) – No Shipments of Hot–Rolled, Flat–Rolled Carbon Quality Steel Products from Brazil Pursuant to U.S. Customs and Border Protection Inquiry, dated June 24, 2008.

Scope of the Order

For purposes of this order, the products covered are certain hot–rolled flat–rolled carbon–quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non–metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat–rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this order.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial–free (''IF'')) steels, high strength low alloy (''HSLA'') steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro–alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro–alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro–alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this order, regardless of HTSUS definitions, are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.012 percent of boron, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this order unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this order:

- Alloy hot–rolled steel products in which at least one of the chemical elements exceeds those listed above (including *e.g.*, ASTM specifications A543, A387, A514, A517, and A506).
- SAE/AISI grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico–manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent.
- ASTM specifications A710 and A736.
- USS Abrasion–resistant steels (USS AR 400, USS AR 500).
- Hot–rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10– 0.14%	0.90 %	0.025 % Max	0.005 %	0.30 -	0.3 0 -	0.2 0 -	0.20 %

Width = 44.80 inches maximum; Thickness = 0.063–0.198 inches; Yield Strength = 50,000 ksi minimum; Tensile Strength = 70,000–88,000 psi.

• Hot–rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–	0.70 –	0.025%	0.006	0.30 –	0.3	0.25	0.20
0.16	0.90	Max	%	0.50	0 –	%	%
%	%		Max	%	0.5	Max	Max
Mo					0%		
0.21							
%							
Max							

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum; Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

• Hot–rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–	1.30 -	0.025%	0.005	0.30 -	0.5	0.20	0.20
0.14	1.80	Max	%	0.50	0 -	-	%
%	%		Max	%	0.7	0.40	Max
V(wt)	Cb				0%	%	
0.10	0.08						
%	%						
Max	Max						

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum; Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

• Hot–rolled steel coil which meets the following chemical, physical and mechanical specifications.

C	Mn	P	S	Si	Cr	Cu	Ni
0.15%	1.4	0.025	0.010	0.50	1.0	0.5	0.20
Max	0%	% Max	%Max	%	0%	0%	%
Nb	Max	Al		Max	Ma	Max	Max
0.005	Ca	0.01 -			x		
% Min	Treated	0.70%					

Width = 39.37 inches; Thickness = 0.181 inches maximum; Yield Strength = 70,000 psi minimum for thickness 0.148 inches and 65,000 psi minimum for ''thicknesses'' > 0.148 inches; account for 64 FR 38650; Tensile Strength = 80,000 psi minimum.

• Hot–rolled dual phase steel, phase–hardened, primarily with a ferritic–martensitic microstructure, contains 0.9 percent up to and including 1.5 percent silicon by weight, further characterized by either (i) tensile strength between 540 N/mm^2 and 640 N/mm^2 and an elongation percentage ≥ 26 percent for thicknesses of 2 mm and above, or (ii) a tensile strength between 590 N/mm^2 and 690 N/mm^2 and an elongation percentage ≥ 25 percent for thicknesses of 2 mm and above.

• Hot–rolled bearing quality steel, SAE grade 1050, in coils, with an inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface quality and chemistry restrictions as follows: 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maximum chromium.

• Grade ASTM A570–50 hot–rolled steel sheet in coils or cut lengths, width of 74 inches (nominal, within ASTM tolerances), thickness of 11 gauge (0.119 inch nominal), mill edge and skin passed, with a minimum copper content of 0.20%.

The merchandise subject to this order is currently classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, 7212.50.00.00. Certain hot–rolled flat–rolled carbon–quality steel covered by this order, including: vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under this order is dispositive.

Intent To Rescind Administrative Review

Pursuant to 19 CFR § 351.213(d)(3), the Department may rescind an administrative review if it concludes that during the POR there were no entries, exports, or sales of the subject merchandise. The Department's practice, supported by substantial precedent, requires that there be entries during the POR upon which to assess antidumping duties. *See, e.g., Stainless Steel Bar from Italy: Preliminary Results and Partial Rescission of Administrative Review*, 70 FR 17656 (April 7, 2005) affirmed in *Stainless Steel Bar from Italy: Final Results of Antidumping Duty Administrative Review and Rescission of Review*, 70 FR 46480 (August 10, 2005).

Both CSN and CST certified that they had no entries of subject merchandise during the 2007–2008 POR, which the Department confirmed on the basis of official data from CBP. Therefore, we have preliminarily determined to rescind the 2007–2008 administrative review.

Public Comment

Interested parties may submit case briefs not later than 20 days after the date of publication of this notice. *See* 19 CFR § 351.309(c). Rebuttal briefs, which must be limited to issues raised in such briefs, must be filed not later than 7 days from the case brief after the date of publication of this notice. *See* 19 CFR § 351.309(d). Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. Further, parties submitting written comments should provide the Department with an additional copy of the public version of any such comments on diskette. An interested party may request a hearing within 20 days of publication of this notice. Any hearing, if requested, will be held 34 days after the date of publication of this notice, or the first working day thereafter. *See* 19 CFR § 351.310. We will issue our final decision concerning the conduct of the review no later than 120 days from the date of publication of this notice.

This notice is published in accordance with section 777(i)(1) of the Act and 19 CFR § 351.213(d)(4).

Dated: August 25, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–20403 Filed 9–2–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Proposed Information Collection; Comment Request; Technology Innovation Program Application Requirements

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before November 3, 2008.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Barbara Lambis at 301–975–4447 or by e-mail at *barbara.lambis@nist.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Technology Innovation Program (TIP) is a competitive cost sharing program designed to assist U.S. businesses and institutions of higher education or other organizations, such as national laboratories, governmental laboratories (not including NIST), and nonprofit research institutes, to support, promote, and accelerate innovation in the United States through high-risk, high-reward research in areas of critical national need sponsored by the Department of Commerce's National Institute of Standards and Technology. High-risk, high-reward research is research that:

a. Has the potential for yielding transformational results with far-ranging or wide-ranging implications;

b. Addresses areas of critical national need that support, promote, and accelerate innovation in the United States and is within NIST's areas of technical competence; and is too novel or spans too diverse a range of disciplines to fare well in the traditional peer-review process.

This request is for the information collection requirements associated with submission of proposals for TIP funding. The intent of the collection is to meet statutory requirements for TIP, as well as compliance with 15 CFR part 14.

II. Method of Collection

Paper or electronically via *www.grants.gov*.

III. Data

OMB Control Number: 0693–0050.

Form Number: NIST–1022.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations; not-for-profit institutions; Federal government.

Estimated Number of Respondents: 300.

Estimated Time Per Response: 37 hours.

Estimated Total Annual Burden Hours: 11,100.

Estimated Total Annual Cost to Public: $37,500.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 28, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–20417 Filed 9–2–08; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcement of a Public Meeting on U.S. Technical Participation in the 13th Quadrennial Conference of the International Organization of Legal Metrology (OIML)

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Meeting announcement and request for comments.

SUMMARY: The National Institute of Standards and Technology (NIST) will hold a public meeting to discuss U.S. technical participation in the 13th Quadrennial Conference of the International Organization of Legal Metrology (OIML). This pre-conference public meeting is open to all interested parties.

The principal focus of the public meeting will be the 26 OIML Recommendations on legal measuring instruments that will be presented for ratification by the Conference. These Recommendations and OIML-member nations' technical comments on them will be reviewed with interested parties who will be given an opportunity to present their views on the Recommendations and other relevant issues related to the Conference.

Participants with an expressed interest in particular topics may obtain copies of the OIML Conference technical agenda, including copies of the Recommendations to be ratified, from the OIML International Conference Web site at *http://www.oiml.org/events/sydney,* at the OIML Web site at *http://www.oiml.org,* or from the NIST International Legal Metrology Group.

Interested parties wishing to schedule an oral presentation at the pre-conference meeting should provide a written summary of comments to the NIST International Legal Metrology Group no later than 2 October 2008. Written comments from parties unable to attend the pre-conference public meeting are also welcome.

DATES: Pre-conference meeting at the National Institute of Standards and Technology: Thursday, 9 October 2008 from 10 a.m. to 12 noon; Thirteenth OIML International Conference of Legal Metrology in Sydney, Australia, 29–31 October 2008.

ADDRESSES: Pre-conference meeting: National Institute of Standards and Technology, Administration Building, Lecture Room D, 100 Bureau Drive, Gaithersburg, MD 20899; International Conference: Star City Hotel, Sydney, Australia.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Richter, International Legal Metrology Group, Weights and Measures Division, National Institute of Standards and Technology, Gaithersburg, MD 20899–2600; telephone: 301–975–3997; fax: 301–926–8091; e-mail: *ralph.richter@nist.gov.*

SUPPLEMENTARY INFORMATION: The International Organization of Legal Metrology (OIML) is an intergovernmental treaty organization in which the United States and 58 other nations are members. Its principal purpose is to harmonize national laws and regulations pertaining to testing and verifying the performance of legal measuring instruments used for equity in commerce, for public and worker health and safety, and for monitoring and protecting the environment. The harmonized results promote the international trade of measuring instruments and products affected by measurement.

Twenty-six Recommendations will be presented for ratification by the Conference in the following two categories; Category 1: those already approved by the International Committee of Legal Metrology (CIML) between 2004 and 2007 and Category 2: those that are expected to be submitted directly to the Conference for ratification. These Recommendations and the OIML-member nations holding the responsible secretariat for their development are listed below:

Category 1

R21 ''Taximeters. Metrological and technical requirements, test procedures and test report format.'' (revision) (United Kingdom);

R35–1 ''Material measures of length for general use. Part 1: Metrological and technical requirements.'' (revision) (United Kingdom);

R39 ''Rockwell hardness machines.'' (revision) (United States);

R49–1 and R49–2 ''Water meters intended for the metering of cold potable water and hot water. Part 1: Metrological and technical requirements and Part 2: Test methods.'' (revision) (United Kingdom);

R51–1 ''Automatic catchweighing instruments. Part 1: Metrological and technical requirements—Tests.'' (revision) (United Kingdom);

R65 ''Force measuring system of uniaxial material testing machines.'' (revision) (United States);

R76–1 ''Non-automatic weighing instruments. Part 1: Metrological and technical requirements—Tests.'' (revision) (France and Germany);

R82 ''Gas chromatographic systems for measuring the pollution from pesticides and other toxic substances.'' (revision) (United States);

R83 ''Gas chromatograph/mass spectrometer systems for the analysis of organic pollutants in water.'' (revision) (United States);

R99 ''Amendment: Instruments for measuring vehicle exhaust emissions (joint publication ISO3930/OIML R 99).'' (revision) (Netherlands);

R107–1 ''Discontinuous totalizing automatic weighing instruments (totalizing hopper weighers). Part 1: Metrological and technical requirements—Tests.'' (revision) (United Kingdom);

R116 ''Inductively coupled plasma atomic emission spectrometers for the measurement of metal pollutants in water.'' (revision) (United States);

R117–1 ''Dynamic measuring systems for liquids other than water. Part 1: Metrological and technical requirements.'' (revision) (United States and Germany);

R134–1 ''Automatic instruments for weighing road vehicles in motion and axle-load measuring. Part 1: Metrological and technical requirements—Tests.'' (new document) (United Kingdom);

R137–1 ''Gas Meters. Part 1: Requirements.'' (new document) (Netherlands);

R138 ''Vessels for commercial transactions.'' (new document) (Switzerland);

R139 ''Compressed gaseous fuel measuring systems for vehicles.'' (new document) (Netherlands);

R140 ''Measuring systems for gaseous fuel.'' (new document) (Netherlands);

B–3/Amend ''OIML Certificate System for Measuring Instruments—Amendment.'' (new document) (OIML);

B10–1/Amend ''Framework for a Mutual Acceptance Arrangement on OIML Type Evaluations (MAA)—Amendment.'' (new document) (OIML).

Category 2

R56 ''Standard solutions reproducing the conductivity of electrolytes'' (revision) (Russian Federation);

R71 ''Fixed storage tanks. General requirements'' (revision) (Austria and Germany);

R85 ''Automatic level gauges for measuring the level of liquid in fixed storage tanks.'' (revision) (Austria and Germany);

Procedure for calibration and verification of the main characteristics of thermographic instruments (new document) (Russian Federation);
Automatic refractometers: Methods and means of verification (new document) (Russian Federation).

Dated: August 22, 2008.

James M. Turner,

Deputy Director.

[FR Doc. E8–20147 Filed 9–2–08; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; International Dolphin Conservation Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before November 3, 2008.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Susan Wang, (562) 980-4199 or *susan.wang@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

National Oceanic and Atmospheric Administration (NOAA) collects information to implement the International Dolphin Conservation Program Act (Act). The Act allows entry of yellowfin tuna into the United States (U.S.), under specific conditions, from nations in the International Dolphin Conservation Program that would otherwise be under embargo. The Act also allows U.S. fishing vessels to participate in the yellowfin tuna fishery in the eastern tropical Pacific Ocean (ETP) on terms equivalent with the vessels of other nations. NOAA collects information to allow tracking and verification of ''dolphin safe'' and ''non-dolphin safe'' tuna products from catch through the U.S. market.

The regulations implementing the Act are at 50 CFR parts 216 and 300. The recordkeeping and reporting requirements at 50 CFR parts 216 and 300 form the basis for this collection of information. This collection includes permit applications, notifications, tuna tracking forms, reports, and certifications that provide information on vessel characteristics and operations in the ETP, the origin of tuna and tuna products, and certain other information necessary to implement the Act.

II. Method of Collection

Paper applications, other paper records, electronic and facsimile reports, and telephone calls are required from participants. Methods of submittal include transmission of paper forms via regular mail and facsimile as well as electronic submission via e-mail or an ETP site (password protected).

III. Data

OMB Number: 0648–0387.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations; and Individuals or households.

Estimated Number of Respondents: 101.

Estimated Time per Response: 35 minutes for a vessel permit application; 10 minutes for an operator permit application; 30 minutes for a request for a waiver to transit the ETP without a permit (and subsequent radio reporting); 10 minutes for a notification of vessel departure; 10 minutes for a change in permit operator; 10 minutes for notification of a net modification; 10 hours for an experimental fishing operation waiver; 15 minutes for a request for a Dolphin Mortality Limit; 35 minutes for written notification to request active status for a small tuna purse seine vessel; 5 minutes for written notification to request inactive status for a small tuna purse seine vessel; 5 minutes for written notification of the intent to transfer a tuna purse seine vessel to foreign registry and flag; 10 minutes for notification of vessel arrival; 60 minutes for a tuna tracking form; 10 minutes for a monthly tuna storage removal report; 60 minutes for a monthly tuna receiving report; and 30 minutes for a special report documenting the origin of tuna (if requested by the NOAA Administrator).

Estimated Total Annual Burden Hours: 328.

Estimated Total Annual Cost to Public: $950.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 28, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–20415 Filed 9–2–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Pacific Islands Region Coral Reef Ecosystems Logbook and Reporting

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before November 3, 2008.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW.,

Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Walter Ikehara, (808) 944–2275 or *Walter.Ikehara@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS) requires U.S. fishing vessels registered for use with, or any U.S. citizen issued with, a Special Coral Reef Ecosystem Fishing Permit (authorized under the Fishery Management Plan for Coral Reef Ecosystems of the Western Pacific Region) to complete logbooks and submit them to NMFS. The information in the logbooks is used to obtain fish catch/fishing effort data on coral reef taxa (level of classification such as family, genus, or species, depending on level applicable for management) harvested in designated low-use marine protected areas and on potentially-harvested coral reef taxa in waters of the U.S. exclusive economic zone in the western Pacific region. These data are needed to determine the condition of the stocks and whether the current management measures are having the intended effects, to evaluate the benefits and costs of changes in management measures, and to monitor and respond to incidental takes of endangered and threatened marine animals.

II. Method of Collection

Information is submitted to NMFS in the form of paper logbook sheets and paper transshipment forms within 30 days of each landing of coral reef harvest.

III. Data

OMB Number: 0648–0462.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations; individuals or households.

Estimated Number of Respondents: 5.

Estimated Time Per Response: Pre-trip and pre-landing notifications, 3 minutes; logbook reports, 30 minutes; and transshipment reports, 15 minutes.

Estimated Total Annual Burden Hours: 382.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 28, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–20416 Filed 9–2–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XK17

Endangered Species; File No. 13573

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Michael Salmon, Florida Atlantic University, 777 Glades Road, Boca Raton, Florida 33431–0991, has applied in due form for a permit to take green (Chelonia mydas) sea turtles for purposes of scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before October 3, 2008.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Southeast Region, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; phone (727)824–5312; fax (727)824–5309.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 13573.

FOR FURTHER INFORMATION CONTACT: Patrick Opay or Kate Swails, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested 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 222–226).

The applicant proposes to study when green sea turtle navigation is guided by magnetic versus solar cues. Animals would be captured by hand, handled, weighed, measured, flipper tagged, passive integrated transponder tagged, transported, temporarily held for experiments in an outdoor tank arena, and released. Researchers would annually capture and conduct research on up to 28 animals on near shore reefs of Palm Beach County, Florida. The permit would be issued for 3 years.

Dated: August 28, 2008.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8–20428 Filed 9–2–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XK12

Atlantic Pelagic Longline Take Reduction Team Meeting

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

ACTION: Notice of public meeting.

SUMMARY: NMFS is convening a meeting of the Atlantic Pelagic Longline Take Reduction Team (PLTRT). The PLTRT will discuss the proposed Atlantic Pelagic Longline Take Reduction Plan (RIN 0648–AV65) and provide updates to team members on recent research and actions.

DATES: The meeting will be held on September 8, 2008, from 1 p.m. to 6 p.m., and on September 9, 2008, from 8:30 a.m. to 5:15 p.m.

ADDRESSES: The PLTRT meeting will be held at the Pier 5 Hotel, 711 Eastern Avenue, Baltimore, MD 21202. Phone: (410) 539–2000, Fax: (410) 783–1469.

FOR FURTHER INFORMATION CONTACT: Erin Fougeres: (727) 824–5312 or Kristy Long: (301) 713–2322.

SUPPLEMENTARY INFORMATION:

Bycatch Reduction Requirements in the MMPA

Section 118(f)(1) of the Marine Mammal Protection Act (MMPA) requires NMFS to develop and implement take reduction plans to assist in the recovery or prevent the depletion of each strategic marine mammal stock that interacts with Category I and II fisheries. It also provides NMFS discretion to develop and implement a take reduction plan for any other marine mammal stocks that interact with a Category I fishery, which the agency determines, after notice and opportunity for public comment, has a high level of mortality and serious injury across a number of such marine mammal stocks.

The MMPA defines a strategic stock as a marine mammal stock: (1) for which the level of direct human-caused mortality exceeds the potential biological removal (PBR) level; (2) which is declining and is likely to be listed under the Endangered Species Act (ESA) in the foreseeable future; or (3) which is listed as threatened or endangered under the ESA or as a depleted species under the MMPA (16 U.S.C. 1362(2)). PBR is the maximum number of animals, not including natural mortalities, that can be removed annually from a stock, while allowing that stock to reach or maintain its optimum sustainable population level. Category I or II fisheries are fisheries that, respectively, have frequent or occasional incidental mortality and serious injury of marine mammals. The immediate goal of a take reduction plan for a strategic stock is to reduce, within six months of its implementation, the incidental serious injury or mortality of marine mammals from commercial fishing to levels less than PBR. The long-term goal is to reduce, within five years of its implementation, the incidental serious injury and mortality of marine mammals from commercial fishing operations to insignificant levels approaching a zero serious injury and mortality rate, taking into account the economics of the fishery, the availability of existing technology, and existing state or regional fishery management plans. The insignificance threshold, or upper limit of annual incidental mortality and serious injury of marine mammal stocks by commercial fisheries, has been defined at 50 CFR 229.2 as 10 percent of the PBR for a stock of marine mammals.

History of the PLTRT

The PLTRT was first convened on June 29, 2005 (70 FR 36120, June 22, 2005) to address the incidental serious injury and mortality of short- and long-finned pilot whales (*Globicephala macrorhynchus* and *Globicephala melas*) in the Atlantic region of the Pelagic Longline Fishery. Because the two species of pilot whales are difficult to differentiate at sea, abundance and total fishery-related mortality and serious injury cannot be estimated separately for each species. Therefore, in the U.S. Atlantic and Gulf of Mexico, these estimates are combined for both *Globicephala* species (i.e., *Globicephala spp.*). *Globicephala* spp. is then split into the western North Atlantic and Gulf of Mexico stocks. The western North Atlantic stocks of *Globicephala spp.* were identified as strategic in the 2003 Marine Mammal Stock Assessments report (SAR). However, NMFS revised the abundance estimates for pilot whales in the 2005 SAR and, just prior to convening the PLTRT, these stocks were no longer classified as strategic. More recently, the 2007 SAR also reports that the estimated average annual human-related mortality and serious injury for the last five years does not exceed PBR and the stocks remain non-strategic.

The Atlantic Pelagic Longline Fishery also incidentally seriously injures and kills Risso's dolphins (*Grampus griseus*). For Risso's dolphins and long-finned and short-finned pilot whales, estimated serious injury and mortality levels in the pelagic longline fishery exceed the insignificance threshold but do not exceed the PBR level for each stock. Because these species are below PBR and considered non-strategic stocks but interact with a Category I fishery, NMFS directed the PLTRT to develop and submit a draft Take Reduction Plan to the agency within 11 months. In accordance with the long-term goal of MMPA section 118, this draft Take Reduction Plan would focus on reducing incidental mortalities and serious injuries of pilot whales and Risso's dolphins to a level approaching a zero mortality and serious injury rate within five years of implementation of the plan.

As required under section 118 (f)(8) of the MMPA, the PLTRT developed a draft Take Reduction Plan (TRP) by consensus, and submitted this draft to NMFS. NMFS then published the TRP and implementing regulations proposed by the team in the **Federal Register** on June 24, 2008 (73 FR 35623) for a public comment period of 90 days, ending on September 22, 2008. NMFS is convening a meeting of the PLTRT during the public comment period, which will be facilitated by Scott McCreary and Bennett Brooks, CONCUR, Inc., Berkeley, California. This meeting will occur September 8–9, 2008 in Baltimore, MD (see **DATES** and **ADDRESSES**). Take Reduction Teams are not subject to the Federal Advisory Committee Act (5 U.S.C. App.). Meetings are open to the public.

Dated: August 27, 2008.

Helen Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8–20419 Filed 9–2–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XJ92

Permanent Advisory Committee to the U.S. National Section to the Western and Central Pacific Fisheries Commission (WCPFC); Meeting Announcement

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

ACTION: Notice of public meeting.

SUMMARY: NMFS announces a meeting of the Permanent Advisory Committee to the U.S. National Section to the WCPFC from 17–19 September, 2008, in Honolulu, Hawaii. Meeting topics are provided under the SUPPLEMENTARY INFORMATION section of this notice.

DATES: The meeting of the Permanent Advisory Committee will be held on September 17–19, 2008, from 8:30 a.m. to 4:30 p.m. (or until business is concluded), Hawaii Standard Time.

ADDRESSES: The meeting will be held at the Hilton Hawaiian Village in the Sea Pearl Meeting Room, 2005 Kalia Road, Honolulu, HI 96814.

FOR FURTHER INFORMATION CONTACT: Rhea Moss at 808–944–2161 (voice) or 808–973–2941 (fax).

SUPPLEMENTARY INFORMATION: In accordance with the Western and Central Pacific Fisheries Convention Implementation Act, the Secretary of Commerce has appointed 20 members to the WCPFC Permanent Advisory Committee. Four additional members are mandated by the Western and Central Pacific Fisheries Convention Implementation Act, who are (1) the chair of the Western Pacific Fishery Management Council's Advisory Committee or the chair's designee; and (2) officials of the fisheries management authorities of American Samoa, Guam, and the Northern Mariana Islands (or their designees). The Committee is established to support the work of the U.S. National Section to the WCPFC in an advisory capacity with respect to U.S. participation in the WCPFC. NMFS, Pacific Islands Region, provides administrative and technical support to the Committee.

As this is the first meeting of the Permanent Advisory Committee, it will set its agenda and consider its organization, prescribe its practices and procedures, as well as elect a chairperson.

The Permanent Advisory Committee will also receive information on: (1) 2006 and 2007 WCPFC activities; (2) status of the stocks and fisheries in 2006 and 2007; (3) issues related to the development of conservation and management measures for bigeye and yellowfin tuna and other species for 2008 and beyond; (4) implementation of the WCPFC's Regional Observer Programme and Vessel Monitoring System and other compliance mechanisms; (5) issues related to the impacts of fishing on non-target, associated and dependent species, such as sea turtles, seabirds and sharks; and (6) other issues, as necessary.

Special Accommodations

The meeting location is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Rhea Moss, NMFS, 808–944–2161(voice) or 808–973–2941 (fax), at least 7 days prior to the meeting date.

Authority: P.L. 109–479, Sec. 501, *et seq.*

Dated: August 28, 2008.

Emily H. Menashes,

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

[FR Doc. E8–20407 Filed 8–28–08; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA) Science Advisory Board

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the NOAA Science Advisory Board. The members will discuss and provide advice on issues outlined in the agenda below.

DATES: The meeting is scheduled for: September 10, 2008 from 3 p.m. to 5 p.m. Eastern Daylight Time.

ADDRESSES: Conference call. Public access is available at SSMC 3, Room # 12836, 1315 East-West Highway, Silver Spring, MD.

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia Decker, Executive Director, Science Advisory Board, NOAA, Rm. 11230, 1315 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–734–1156, Fax: 301–713–1459, *E-mail: Cynthia.Decker@noaa.gov*).

SUPPLEMENTARY INFORMATION: The Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on strategies for research, education, and application of science to operations and information services. SAB activities and advice provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

Matters to be Considered: The agenda for the meeting is as follows:

Date and Time: September 10, 2008 from 3 p.m. to 5 p.m. ET.

Agenda

1. Discussion and consideration of the Draft Report on the Review of the NOAA Climate Research and Modeling Program, submitted to the SAB by the Climate Working Group.

2. SAB Strategic Planning—for future meetings and for the upcoming Administration transition.

3. Discussion and consideration of the way forward for the SAB on Oceans and Human Health.

Dated: August 27, 2008.

Mark E. Brown,

Chief Financial Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. E8–20425 Filed 9–2–08; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XK05

Schedules for Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops

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

ACTION: Notice of public workshops.

SUMMARY: NMFS announces free Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops to be held in October, November, and December 2008. Certain fishermen and shark dealers are required to attend a workshop to meet new regulatory requirements and maintain valid permits. Specifically, the Atlantic Shark Identification Workshop is mandatory for all federally permitted Atlantic shark dealers. Also, the Protected Species Safe Handling, Release, and Identification Workshop is mandatory for vessel owners and operators who use bottom longline, pelagic longline, or gillnet gear, and have also been issued shark or swordfish limited access permits. Additional free workshops will be held in 2009 and announced in the **Federal Register**.

DATES: The Atlantic Shark Identification Workshops will be held October 9, November 6, and December 4, 2008.

The Protected Species Safe Handling, Release, and Identification Workshops will be held October 14, November 19 and 25, and December 17, 2008.

See **SUPPLEMENTARY INFORMATION** for further details.

ADDRESSES: The Atlantic Shark Identification Workshops will be held in Norfolk, VA; Dania Beach, FL; and Panama City, FL.

The Protected Species Safe Handling, Release, and Identification Workshops will be held in Kenner, LA; Kitty Hawk, NC; Indian Rocks Beach, FL; and Dedham, MA.

See **SUPPLEMENTARY INFORMATION** for further details on workshop locations.

FOR FURTHER INFORMATION CONTACT: Greg Fairclough by phone:(727) 824–5399, or by fax: (727) 824–5398.

SUPPLEMENTARY INFORMATION: The workshop schedules, registration information, and a list of frequently asked questions regarding these workshops are posted on the internet at: *http://www.nmfs.noaa.gov/sfa/hms/workshops/*.

Atlantic Shark Identification Workshop

Effective December 31, 2007, an Atlantic shark dealer may not receive, purchase, trade, or barter for Atlantic shark unless a valid Atlantic Shark Identification Workshop certificate is on the premises of each business listed under the shark dealer permit (71 FR 58057; October 2, 2006). Dealers who attend and successfully complete a workshop will be issued a certificate for each place of business that is permitted to receive sharks.

Dealers may send a proxy to an Atlantic Shark Identification Workshop, however, if a dealer opts to send a proxy, the dealer must designate a proxy for each place of business covered by the dealer's permit which first receives Atlantic sharks. Only one certificate will be issued to each proxy. A proxy must be a person who: is currently employed by a place of business covered by the dealer's permit; is a primary participant in the identification, weighing, and/or first receipt of fish as they are offloaded from a vessel; and fills out dealer reports. After December 31, 2007, an Atlantic shark dealer may not renew a Federal shark dealer permit unless a valid Atlantic Shark Identification Workshop certificate for each business location which first receives Atlantic sharks has been submitted with the permit renewal application. Additionally, trucks or other conveyances which are extensions of a dealer's place of business must possess a copy of a valid dealer or proxy Atlantic Shark Identification Workshop certificate. Sixteen free Atlantic Shark Identification Workshops were held in 2007.

Workshop Dates, Times, and Locations

1. October 9, 2008, from 12 p.m. - 5 p.m., Mary D. Pretlow Anchor Branch Library, 111 W. Ocean View Avenue, Meeting Room 1, Norfolk, VA 23503.
2. November 6, 2008, from 9 a.m. - 3 p.m., Nova Southeastern University Oceanagraphic Center, 800 North Ocean Drive, Dania Beach, FL 33004.
3. December 4, 2008, from 9 a.m. - 3 p.m., NMFS Panama City Laboratory, 3500 Delwood Beach Road, Panama City, FL 32408.

Registration

To register for a scheduled Atlantic Shark Identification Workshop, please contact Eric Sander by email at *esander@peoplepc.com* or by phone at (386) 852–8588.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring the following items to the workshop:

Atlantic shark dealer permit holders must bring proof that the individual is an agent of the business (such as articles of incorporation), a copy of the applicable permit, and proof of identification.

Atlantic shark dealer proxies must bring documentation from the shark dealer acknowledging that the proxy is attending the workshop on behalf of the Atlantic shark dealer, a copy of the appropriate permit, and proof of identification.

Workshop Objectives

The shark identification workshops are designed to reduce the number of unknown and improperly identified sharks reported in the dealer reporting form and increase the accuracy of species-specific dealer-reported information. Reducing the number of unknown and improperly identified sharks will improve quota monitoring and the data used in stock assessments. These workshops will train shark dealer permit holders or their proxies to properly identify Atlantic shark carcasses.

Protected Species Safe Handling, Release, and Identification Workshop

Effective January 1, 2007, shark limited access and swordfish limited access permit holders who fish with longline or gillnet gear, must submit a copy of their Protected Species Safe Handling, Release, and Identification Workshop certificate in order to renew either permit (71 FR 58057; October 2, 2006). As such, vessel owners who have not attended a workshop and received a NMFS certificate must attend one of the workshops offered in October, November, and December 2008 to fish with or renew either permit. Additionally, new shark and swordfish limited access permit applicants must attend a Protected Species Safe Handling, Release, and Identification Workshop and must submit a copy of their workshop certificate before such permits will be issued.

In addition to certifying permit holders, all longline and gillnet vessel operators fishing on a vessel issued a limited access swordfish or limited access shark permit are required to attend a Protected Species Safe Handling, Release, and Identification Workshop. Vessels that have been issued a limited access swordfish or limited access shark permit may not fish unless both the vessel owner and operator have valid workshop certificates. Vessel operators must possess on board the vessel valid workshop certificates for both the vessel owner and the operator at all times. Seven free Protected Species Safe Handling, Release, and Identification Workshops were held in 2006, and 34 were held in 2007.

Workshop Dates, Times, and Locations

1. October 14, 2008, from 9 a.m. - 5 p.m., Hilton New Orleans Airport, 901 Airline Drive, Kenner, LA 70062.
2. November 19, 2008, from 9 a.m. - 5 p.m., Hilton Garden Inn, 5353 North Virginia Dare Trail, Kitty Hawk, NC 27949.
3. November 25, 2008, from 9 a.m. - 5 p.m., Holiday Inn Habourside, 401 2nd Street, Indian Rocks Beach, FL 33785.
4. December 17, 2008, from 9 a.m. - 5 p.m., Hilton Boston/Dedham, 25 Allied Drive, Dedham, MA 02026.

Registration

To register for a scheduled Protected Species Safe Handling, Release, and Identification Workshop, please contact Aquatic Release Conservation ((877) 411–4272), 1640 Mason Ave., Daytona Beach, FL 32117.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring the following items with them to the workshop:

Individual vessel owners must bring a copy of the appropriate permit(s), a copy of the vessel registration or documentation, and proof of identification.

Representatives of a business owned or co-owned vessel must bring proof that the individual is an agent of the business (such as articles of incorporation), a copy of the applicable permit(s), and proof of identification.

Vessel operators must bring proof of identification.

Workshop Objectives

The protected species safe handling, release, and identification workshops are designed to teach longline and gillnet fishermen the required techniques for the safe handling and release of entangled and/or hooked protected species, such as sea turtles,

marine mammals, and smalltooth sawfish. Identification of protected species will also be taught at these workshops in an effort to improve reporting. Additionally, individuals attending these workshops will gain a better understanding of the requirements for participating in these fisheries. The overall goal for these workshops is to provide participants the skills needed to reduce the mortality of protected species, which may prevent additional regulations on these fisheries in the future.

Grandfathered Permit Holders

Participants in the industry-sponsored workshops on safe handling and release of sea turtles that were held in Orlando, FL (April 8, 2005) and in New Orleans, LA (June 27, 2005) were issued a NOAA workshop certificate in December 2006 that is valid for three years. Grandfathered permit holders must include a copy of this certificate when renewing limited access shark and limited access swordfish permits each year. Failure to provide a valid NOAA workshop certificate may result in a permit denial.

Dated: August 27, 2008.

Emily H. Menashes

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

[FR Doc. E8–20422 Filed 9–2–08; 8:45 am]

BILLING CODE 3510–22–S

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Senior Executive Service; Performance Review Board; Members

AGENCY: Court Services and Offender Supervision Agency for the District of Columbia.

ACTION: Notice.

SUMMARY: Section 4314(c) of Title 5, U.S.C. (as amended by the Civil Service Reform Act of 1978) requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Boards (PRB) to review, evaluate and make a final recommendation on performance appraisals assigned to individual members of the agency's Senior Executive Service. The PRB established for the Court Services and Offender Supervision Agency (CSOSA), including the District of Columbia Pretrial Services Agency, an independent entity within CSOSA, also makes recommendations to the agency head regarding SES performance awards, rank awards and bonuses. Section 4314(c)(4) requires that notice of appointment of Performance Review Board members be published in the **Federal Register**.

The following persons have been appointed to serve as members of the Performance Review Board for the Court Services and Offender Supervision Agency: James Williams, Arthur Elkins, Clifford Keenan, and Kim Whatley from October 1, 2008, to September 30, 2010.

FOR FURTHER INFORMATION CONTACT: Tonya Turner, Deputy Associate Director for Human Resources, Court Services and Offender Supervision Agency, 655 15th Street, NW., Suite 800, Washington, DC 20005, (202) 220–5477.

Adrienne R. Poteat,

Acting Director.

[FR Doc. E8–20414 Filed 9–2–08; 8:45 am]

BILLING CODE 3129–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Grant an Exclusive Patent License

AGENCY: Department of the Air Force, DOD.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Part 404 of Title 37, code of Federal Regulations, which implements Public Law 96–517, as amended, the Department of the Air Force announces its intention to grant Spectral Sciences, Inc., Incorporated in the State of Massachusetts, having a place of business at 4 Fourth Avenue, Burlington, Massachusetts 01803–3304, an exclusive license in any right, title and interest the Air Force has in:

U.S. Patent No. 5,884,226, issued 16 March 1999, titled ''System and method for modeling moderate resolution atmospheric propagation,'' by Gail P. Anderson *et al.*, that of U.S. Patent Application Serial No. 09/838801, filed on 20 April 2001, titled ''Band model method for modeling atmospheric propagation at arbitrarily fine spectral resolution,'' by Alexander Berk *et al.*, and that of U.S. Patent Application Serial No. 11/398696, filed on 5 April 2006, titled ''Reformulated atmospheric band model method for modeling atmospheric propagation at arbitrarily fine spectral resolution and expanded capabilities,'' by Gail P. Anderson *et al.*

DATES: A license for this patent will be granted unless a written objection is received within fifteen (15) days from the date of publication of this Notice.

FOR FURTHER INFORMATION: Written objection should be sent to: James M. Skorich, Esq., 2251 Maxwell Ave., SE, 377th ABW/JAN Kirtland AFB, NM 87117–5773. Telephone: (505) 846–1542.

Bao-anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E8–20340 Filed 9–2–08; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Army

Department of Defense Historical Advisory Committee; Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Department of the Army Historical Advisory Committee.

Date: October 23, 2008.

Time: 9 a.m. to 4:30 p.m.

Place: U.S. Army Center of Military History, Collins Hall, Building 35, 103 Third Avenue, Fort McNair, DC 20319–5058.

Proposed Agenda: Review and discussion of the status of historical activities in the United States Army.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Stewart, U.S. Army Center of Military History, ATTN: DAMH–ZC, 103 Third Avenue, Fort McNair, DC 20319–5058; telephone number (202) 685–2709.

SUPPLEMENTARY INFORMATION: The committee will review the Army's historical activities for FY 2008 and those projected for FY 2009 based upon reports and manuscript received throughout the period. And the committee will formulate recommendations through the Chief of Military History to the Chief of Staff, Army, and the Secretary of the Army for advancing the use of history in the U.S. Army.

The meeting of the advisory committee is open to the public. Because of the restricted meeting space, however, attendance may be limited to those persons who have notified the Advisory Committee Management Office in writing at least five days prior to the meeting of their intention to attend the October 23, 2008, meeting. Notifications should be addressed to the Executive Secretary of the committee, Dr. William Stivers, at the U.S. Army

Center of Military History, 103 Third Avenue, Fort Lesley J. McNair, DC 20319–5058.

Any member of the public may file a written statement with the committee before, during, or after the meeting. Such statements may be sent to the Executive Secretary of the committee at the address shown in the paragraph above. To the extent that time permits, the committee chairman may allow public presentations or oral statements at the meeting.

Dated: July 8, 2008.

Richard W. Stewart,

Chief Historian, Center of Military History.

[FR Doc. E8–20353 Filed 9–2–08; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Board on Coastal Engineering Research

AGENCY: Department of the Army, DoD.

ACTION: Notice of meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Board on Coastal Engineering Research.

Date of Meeting: September 23–25, 2008.

Place: Pavilion Ballroom, Hilton Portland and Executive Tower, 921 SW 6th Avenue, Portland, OR 97204.

Time: 8 a.m. to 5 p.m. (September 23, 2008); 8 a.m. to 5:30 p.m. (September 24, 2008); 8 a.m. to 5 p.m. (September 25, 2008).

FOR FURTHER INFORMATION CONTACT: Inquiries and notice of intent to attend the meeting may be addressed to Mr. Thomas W. Richardson, Acting Executive Secretary, Coastal and Hydraulics Laboratory, U.S. Army Engineer Research and Development Center, Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, MS 39180–6199.

SUPPLEMENTARY INFORMATION: The Board provides broad policy guidance and review of plans and fund requirements for the conduct of research and development of research projects in consonance with the needs of the coastal engineering field and the objectives of the Chief of Engineers.

Proposed Agenda: The goal of the meeting is to further the understanding of how a ''Systems Approach'' to coastal protection can be practically implemented throughout the Corps by focusing on systems-based activities in the Pacific Northwest. The morning session on Tuesday, September 23, will consist of a presentation on the Board's Initiatives on Systems Approach to Coastal Management, panel presentations on Systems Approach in R&D (System-wide Technologies, System-wide Coastal Modeling, and Coastal Infrastructure and Asset Management), panel presentations on the Update on the Board's Coastal Study/Demonstration Initiatives (Coastal Field Data Collection Program and Coastal Data Information Program and the National Shoreline Management Study), and a presentation on the Retrospective on the Evolution of the Corps and the Coastal System. The afternoon session will include panel presentations on four major themes of the Actions for Change (System-Based Approaches, Managing Risk, Communicating Risk, and Improving Professional and Technical Expertise). The afternoon session will also include panel presentations dealing with Managing and Communicating Risk (Coastal Infrastructure Management, Operating Constraints and Performance Thresholds at Coastal Ports, Hazard Mitigation Assistance and Risk Analysis, and Communicating Coastal Natural Hazards and How Science Can Help Residents to Avoid or Mitigate Risks). The morning session on Wednesday, September 24, will consist of panel presentations dealing with Changing Northwest Pacific Climate (Northwest Regional Climate Model Predictions—Sea Level, Storm Winds and Waves, Snow Pack and Rainfall; Trends in Storm Power and ''Infragravity Surge'' on the Oregon Coast and the Impacts on the Life Cycles of Coastal Infrastructures; and Ocean Monitoring and Prediction Activities in the Pacific Northwest: The Present and Future of IOOS–NANOOS and of the National Science Foundation Science and Technology Center for Coastal Margin Observation and Prediction) and panel presentations dealing with the Mouth of the Columbia River—Regional Sediment Management (RSM) and Major Rehabilitation Issues (Overview of the Southwest Washington Coastal Erosion Study and the Segue to RSM-related Activities around the Mouth of the Columbia River; Overview of the Historical and Ongoing Changes around the North and South Jetties at the Mouth of the Columbia River; Challenges of Combining Science, Policy, and Local Needs and Evolution of Thought; and Challenges in Maintaining our Large Coastal Navigation Structures and Sediment-Nourished Shoals). The afternoon panel sessions will discuss Willapa Bay and Grays Harbor Long-Term Management Strategy (Willapa Bay, WA: Making Sense of Morphologic Trends; Wallapa Bay, WA: MORPHOS Validation, District Involvement is a Win-Win; and Grays Harbor, WA: Risk-Based Decision Making—Challenges and Benefits) and System-Based Approach—West Coast Issues and Applications (Western States Watershed Study; Headquarters, District, and Partner Perspectives on Project vs. System Budget Challenges; and West Coast Governors' Agreement on Ocean Health). Thursday morning, September 25, is devoted to a bus field trip for general attendees and a Board helicopter tour. The afternoon is devoted to a Board Executive Session to discuss ongoing initiatives and actions.

These meetings are open to the public. Participation by the public is scheduled for 4:30 p.m. on Wednesday, September 24.

The entire meeting and field trip are open to the public, but since seating capacity is limited, advance notice of attendance is required. Oral participation by public attendees is encouraged during the time scheduled on the agenda; written statements may be submitted prior to the meeting or up to 30 days after the meeting.

Thomas W. Richardson,

Director, Coastal and Hydraulics Laboratory, Acting Executive Secretary.

[FR Doc. E8–20358 Filed 9–2–08; 8:45 am]

BILLING CODE 3710–61–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 3, 2008.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395-6974. Commenters should

include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 27, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.

Title: Beginning Postsecondary Study 2004/09 (BPS:04/09) Transcript Collection.

Frequency: One time.

Affected Public:

Not-for-Profit Institutions; State, Local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 2,619.

Burden Hours: 7,857.

Abstract: This is a revision to the 2004/09 Beginning Postsecondary Students Longitudinal Study (BPS:04/09). This revision is to collect postsecondary transcripts for sample members. The BPS is conducted to continue the series of longitudinal collection efforts started in 1990 with the National Postsecondary Students Aid Study to enhance knowledge concerning progress and persistence in postsecondary education for new entrants. The study will address issues such as progress, persistence, and completion of postsecondary education programs, entry into the workforce, the relationship between experiences during postsecondary education and various societal and personal outcomes, and returns to the individual and to society on the investment in postsecondary education.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3746. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202-4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202-401-0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E8–20354 Filed 9–2–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 3, 3008.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira__submission@omb.eop.gov* or via fax to (202) 395-6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 27, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Vocational and Adult Education

Type of Review: Extension.

Title: Native American Vocational and Technical Education Program (NAVTEP) Performance Reports.

Frequency: Semi-Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 30.

Burden Hours: 1213.

Abstract: The Native American Vocational and Technical Education Program (NAVTEP) is requesting approval to collect semi-annual and final performance reports from currently funded NAVTEP grantees. This information is necessary to 1) manage and monitor the current grantees, and 2) effectively close-out the grants at the end of their performance periods. The final performance reports will include final budgets, performance/statistical

reports, GPRA reports, and final evaluation reports. The data, collected from the performance reports will be used to determine if the grantees successfully met their project goals and objectives, so that NAVTEP staff can close-out the grants in compliance.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3728. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202-4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202-401-0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* 202-401-1097. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E8–20355 Filed 9–2–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 3, 3008.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395-6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 27, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Planning, Evaluation and Policy Development

Type of Review: New Collection.

Title: Study of the Effects of the Section 1003(e) Hold Harmless Provision on Title I Allocations.

Frequency: Other: One time.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 49.

Burden Hours: 196.

Abstract: This study will examine the impact of the 100 percent hold-harmless provision under Section 1003(e) on states' Title I Part A allocations to school districts. Findings from this study will inform the upcoming reauthorization of Elementary and Secondary Education Act (ESEA) and will help to guide policymakers who may consider potential changes to section 1003 and the hold-harmless provision.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number3745. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202-4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202-401-0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E8–20356 Filed 9–2–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 3, 2008.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and

frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 27, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: New.

Title: College Assistance Migrant Program (CAMP).

Frequency: Annually.

Affected Public:

Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 38.

Burden Hours: 1,520.

Abstract: For the College Assistance Migrant Program (CAMP), a customized annual performance report (APR) that goes beyond the generic 524B is requested to facilitate the collection of more standardized and comprehensive data to inform Government Performance and Results Act (GPRA), to improve the overall quality of data collection, and to increase the quality and quantity of data that can be used to inform policy decisions. Please note that in 2007, our office, Office of Migrant Education (OME), received OMB approval for a similar APR for the High School Equivalency (HEP), which is another program authorized under the same Higher Education Act of 1965, as amended (HEA) legislation and managed by OME.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3813. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202-4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202-401-0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E8–20357 Filed 9–2–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 3, 2008.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395-6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 27, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: Revision.

Title: Consolidated State Performance Report (Part I and Part II).

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 53.

Burden Hours: 29,707.

Abstract: The Consolidated State Performance Report (CSPR) is the required annual reporting tool for each State, Bureau of Indian Education, District of Columbia, and Puerto Rico as authorized under Section 9303 of the Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB). The Department uses the information derived from the CSPR to: (1) Monitor and report its progress in meeting Strategic Plan goals; (2) assess and report individual program performance, including GPRA performance measures; (3) monitor States' implementation of NCLB and the extent to which States are meeting program and accountability goals; (4) to identify areas for technical assistance to States and overall program improvement; and (5) to inform other reporting and program evaluation requirements specific to individual programs and including the Secretary's Annual State Report to Congress on No Child Left Behind. The current approved CSPR (OMB ι1810-0614) will expire on October 31, 2010. This submission requests approval to include new or substantially revised questions in Sections 1.2, 1.3, 1.4 and 1.6 of CSPR Part I, and section 2.2 of CSPR Part II. The additions and revisions to the CSPR are necessary at this time to: (1) meet new NCLB data collection requirements for School Improvement Grants (Section 1003(a) and 1003(b)) and science

assessments (1111(b)(3)) implemented in SY 07-08, and (2) more accurately reflect the data requirements in 1111(h)(4)(D) and section 3121(b)(1) for evaluation; and (3) align Title I, Part B student performance measures with existing collections.

Additional Information: During the 60-day public comment period, ED received comments on the new and/or substantially revised items added to the CSPR for SY 2007-08 from 9 States. Public comments and ED's responses are detailed in a supplemental document to the SY 2007-08 CSPR currently pending approval from OMB. In addition, during the 60-day comment period, 15 States submitted comments in response to a focused question intended to help the Department determine the viability of moving any or all of the CSPR questions, which were initially prepopulated in 2006-07 to exclusive population by EDFacts for 2007-08 or 2008-09. Based on the responses to the focused question, along with ED's review of SEA transition agreements, ED has determined that it will not move any additional items to full population from EDFacts for the CSPR SY 2007-08 collection. ED will work with the States over the next several months to determine which items will be fully populated by EDFacts for the SY 2008-09 and subsequent CSPR collections. The SY 2007-08 CSPR & EDFacts Cross-walk, linking EDFacts data files to CSPR questions is included in the CSPR clearance package. Technical Amendments for SY 08-09 EDFacts Data Set related to the new CSPR questions in Section 1.4.8 on School Improvement Status also are included in the CSPR SY 2007-08 clearance documents.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3718. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202-4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202-401-0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E8–20359 Filed 9–2–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: U.S. Department of Energy.

ACTION: Notice and Request for Comments.

SUMMARY: The Department of Energy (DOE) invites public comment on a proposed collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before November 3, 2008. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Written comments may be sent to: Karl E. Stoeckle, U.S. Department of Energy, Business Management Specialist, LM–10.1, 1000 Independence Avenue, SW., Washington, DC 20585, or by fax at 202–586–1540 or by e-mail at *karl.stoeckle@hq.doe.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Karl E. Stoeckle, U.S. Department of Energy, Business Management Specialist, LM–10.1, 1000 Independence Avenue, SW., Washington, DC 20585, or by fax at 202–586–1540 or by e-mail at *karl.stoeckle@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) *OMB No.* New; (2) *Information Collection Request Title:* Legacy Management Labor Relations. This information collection request was originally a part of OMB No. 1910–0600, Industrial Relations; (3) *Type of Review:* New; (4) *Purpose:* This package requests information from the Department of Energy Facilities Management Contractors for contract administration, management oversight and cost control. This information is used to ensure that Department contractors recruit and retain a workforce in accordance with the terms of their contract and in compliance with statutory and regulatory requirements as identified by contract; (5) *Respondents:* 35; (6) *Estimated Number of Burden Hours:* 193. (6) *Reporting Frequency:* Annual.

Statutory Authority: The statutory authority for collection of this data is the statute establishing the Department of Energy (''Department of Energy Organization Act,'' Public Law 95–91, of August 4, 1977). It vests the Secretary of Energy with the executive direction and management function, authority, and responsibilities for the Department, including contract management. The provisions of 42 U.S.C. 7254 state that ''the Secretary is authorized to prescribe such procedural and administrative rules as he may deem necessary or appropriate to administer and manage the functions now or hereafter vested in him; and 42 U.S.C. 7256(a) ''the Secretary is authorized to enter into and perform such contracts, leases, cooperative agreements, or other similar transactions with public agencies and private organizations and persons, and to make such payments (in lump sum or installments, and by way of advance or reimbursement) as he may deem to be necessary of appropriated to carry out functions now or here after vested in the Secretary.''

Issued in Washington, DC, on August 26, 2008.

Michael W. Owen,

Director, Office of Legacy Management.

[FR Doc. E8–20383 Filed 9–2–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–462–000]

Algonquin Gas Transmission, LLC; Notice of Application

August 26, 2008.

Take notice that on August 15, 2008, Algonquin Gas Transmission, LLC

(Algonquin), filed with the Federal Energy Regulatory Commission (Commission) applications under section 7(c) of the Natural Gas Act (NGA) seeking authorization (i) construct, install, modify, own, operate and maintain approximately 1.13 miles of 20-inch diameter natural gas transmission pipeline (the Kleen Energy Lateral), one meter station and all ancillary facilities, and (ii) implement initial rates pursuant to Rate Schedules AFT–CL and AIT–2 and related tariff revisions for service on the Kleen Energy Lateral, all as more fully described in the application.

This filing may be also 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 (866) 208–3676 or TTY, (202) 502–8659.

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.

Any questions regarding this application should be directed to: Garth Johnson, General Manager, Certificates & Reporting, Algonquin Gas Transmission, LLC, 5400 Westheimer Court, P.O. Box 1642, Houston, Texas 77251–1642.

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, before the comment date of this notice, 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.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: September 16, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–20260 Filed 9–2–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–459–000]

CenterPoint Energy Gas Transmission Company; Notice of Application

August 26, 2008.

Take notice that on August 13, 2008, CenterPoint Energy Gas Transmission Company (CEGT), 1111 Louisiana Street, Houston, Texas 77002, filed in the above referenced docket an application pursuant to section 7(b) of the Natural Gas Act (NGA) for an order granting a certificate of public convenience and necessity to abandon, by sale, its Line 9–1 and one mile of its Line 9–1–A to Ford Energy (Ford) who, upon transfer, will operate the facilities as part of its non-jurisdictional pipeline system, 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.

The facilities to be abandoned by sale include 2 miles of 14-inch diameter gas supply lateral located in Grady County, Oklahoma known as Line 9–1 as well as a one mile segment of the 12-inch diameter Line 9–1–A also located in Grady County, Oklahoma. The sale price of the facilities is $29,700.

Any questions regarding this application should be directed to Lawrence O. Thomas, Director, Rates & Regulatory, CenterPoint Energy Gas Transmission Company, P.O. Box 21734, Shreveport, Louisiana 71151, or call (318) 429–2804.

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: September 16, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–20265 Filed 9–2–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2232–556]

Duke Energy Carolinas, LLC; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

August 26, 2008.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 2232–556.

c. *Date filed:* August 15, 2008.

d. *Applicant:* Duke Energy Carolinas.

e. *Name of Project:* Catawba-Wateree Project.

f. *Location:* The project is located on Lake Norman in Iredell County, North Carolina. The project does not occupy federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Kelvin K. Reagan, Duke Energy Carolinas, Senior Lake Services Representative, P.O. Box 1006, Charlotte, NC 28201–1006, (704) 382–9386.

i. *FERC Contact:* Rebecca Martin at 202–502–6012, or e-mail *rebecca.martin@ferc.gov.*

j. *Deadline for filing comments and/or motions:* September 26, 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. Please include the project number (P–2232–556) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Application:* The licensee requests Commission approval to grant a lease of 2.31 acres to Lake Cruises, Inc. to expand the Queen's Landing True Public Marina to add one new dock facility that will accommodate 10 boats, add 13 jet-ski ports to existing structures, one new floating dock to be used for rental boats, and one new floating dock for parking antique boats. No dredging is required for this proposal.

l. *Location of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular

application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–20262 Filed 9–2–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2413–104]

Georgia Power Company; Notice of Application for Amendment of License Soliciting Comments, Motions To Intervene, and Protests

August 26, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 2413–104.

c. *Date Filed:* May 12, 2008, and supplemented on August 4, 2008.

d. *Applicant:* Georgia Power Company.

e. *Name of Project:* Wallace Dam Project.

f. *Location:* The proposal would be located immediately adjacent to the Georgia Highway 44 bridge as it crosses Lick Creek, on Lake Oconee, in Putnam County, Georgia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Lee Glenn, Lake Resources Manager, 125 Wallace Dam Road NE, Eatonton, GA 31024, (706) 485–8704.

i. *FERC Contact:* Isis Johnson, Telephone (202) 502–6346, and e-mail: *Isis.Johnson@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* September 26, 2008.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* Georgia Power Company filed an application seeking Commission approval to grant Oconee Bait and Tackle (for Jones Petroleum) to complete improvements and modifications to an existing commercial facility. These improvements include: (1) Removal of a single-slip dock; (2) installation of a boat launching platform for boats in an adjacent dry-storage facility (located off project lands); (3) removal of a wharf dock; (4) removal of a platform that is currently attached to an existing dock; (5) removal of a small platform that is currently attached to an existing ramp and pier dock; and (6) the extension of an existing seawall. All structures would be built in-place and existing vegetation would remain, or be restored once construction is complete.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3372 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–20259 Filed 9–2–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2413–102]

Georgia Power Company; Notice of Application for Amendment of License Soliciting Comments, Motions To Intervene, and Protests

August 26, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 2413–102.

c. *Date Filed:* May 12, 2008, and supplemented on July 28, 2008.

d. *Applicant:* Georgia Power Company.

e. *Name of Project:* Wallace Dam Project.

f. *Location:* The proposal would be located less than two miles south of the Georgia Highway 44 crossing of Richland Creek, on Lake Oconee, in Greene County, Georgia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Lee Glenn, Lake Resources Manager, 125 Wallace Dam Road NE, Eatonton, GA 31024, (706) 485–8704.

i. *FERC Contact:* Isis Johnson, Telephone (202) 502–6346, and e-mail: *Isis.Johnson@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* September 26, 2008.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* Georgia Power Company filed an application seeking Commission approval to grant permission to the Linger Longer Development Company to install a new 10-slip dock, as well as add additional slips to an existing six-slip dock on Lake Oconee. An impervious walkway would also be constructed in association with the new dock. The new dock and additional slips would serve the residents of the Montgomery Place III subdivision. The proposed structures would be built in-place and rip-rap would be used for shoreline stabilization, if necessary. No dredging is proposed as part of this application.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3372 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–20263 Filed 9–2–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2413–103]

Georgia Power Company; Notice of Application for Amendment of License Soliciting Comments, Motions To Intervene, and Protests

August 26, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 2413–103.

c. *Date Filed:* May 12, 2008, and supplemented on July 28, 2008.

d. *Applicant:* Georgia Power Company.

e. *Name of Project:* Wallace Dam Project.

f. *Location:* The proposal would be located less than two miles south of the Georgia Highway 44 crossing of Richland Creek, on Lake Oconee, in Greene County, Georgia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Lee Glenn, Lake Resources Manager, 125 Wallace Dam Road, NE., Eatonton, GA 31024, (706) 485–8704.

i. *FERC Contact:* Isis Johnson, Telephone (202) 502–6346, and e-mail: *Isis.Johnson@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* September 26, 2008.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* Georgia Power Company filed an application seeking Commission approval to grant permission to the Linger Longer Development Company to construct a 10-slip boat dock and an impervious

walkway on Lake Oconee. The new dock would serve the residents of the Montgomery Place II subdivision. The proposed structures would be built in-place and rip-rap would be used for shoreline stabilization, if necessary. No dredging is proposed as part of this application.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3372 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–20264 Filed 9–2–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

August 26, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER06–733–005.
Applicants: Midland Cogeneration Venture Limited Partnership.
Description: Midland Cogeneration Venture Limited Partnership submits revised market-based rate tariff sheets pursuant to the Commission's order authorizing the sale of ancillary services, etc.
Filed Date: 08/21/2008.
Accession Number: 20080822–0304.
Comment Date: 5 p.m. Eastern Time on Thursday, September 11, 2008.

Docket Numbers: ER08–796–002.
Applicants: ITC Midwest LLC.
Description: ITC Midwest LLC et al. submits proposed revisions to the Midwest ISO Open Access Transmission, etc. revised to show an effective date of 12/20/07.
Filed Date: 08/22/2008.
Accession Number: 20080825–0221.
Comment Date: 5 p.m. Eastern Time on Friday, September 12, 2008.

Docket Numbers: ER07–1096–006.
Applicants: Niagara Mohawk Power Corporation.
Description: Addendum to Compliance Electric Refund Report of 1/3/08.
Filed Date: 08/21/2008.
Accession Number: 20080821–5098.
Comment Date: 5 p.m. Eastern Time on Thursday, September 11, 2008.

Docket Numbers: ER08–1098–002.
Applicants: National Grid Generation LLC.
Description: National Grid Generation LLC submits clean and redlined tariff sheets in response to the Commission's Letter Order of 7/22/08.
Filed Date: 08/21/2008.
Accession Number: 20080822–0306.
Comment Date: 5 p.m. Eastern Time on Thursday, September 11, 2008.

Docket Numbers: ER08–1167–001.
Applicants: Kansas City Power & Light Company.
Description: Kansas City Power & Light Co. submits a compliance filing re the revised and restated amendatory agreement No. 1 to the Municipal Participation Agreement, etc.
Filed Date: 08/22/2008.
Accession Number: 20080822–0309.
Comment Date: 5 p.m. Eastern Time on Friday, September 12, 2008.

Docket Numbers: ER08–1202–001.
Applicants: Huntrise Energy Fund LLC.
Description: Huntrise Energy Fund LLC submits a request for additional information and tariff amendments.
Filed Date: 08/19/2008.
Accession Number: 20080821–0112.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 9, 2008.

Docket Numbers: ER08–1262–001; ER08–1263–001; ER08–1268–001, ER00–2687–009; ER08–1270–001; ER04–53–008; ER08–1271–001; ER04–8–006.
Applicants: Ameren Energy Generating Company, Ameren Energy Marketing Company, Union Electric Company, AmerenEnergy Resources Generating Company, AmerenEnergy Medina Valley Cogen, L.L.C.
Description: Ameren Energy Generation Company et al. submit revisions to their market-based rate tariffs in order to allow each to sell ancillary services into Ancillary Services Markets.
Filed Date: 08/21/2008.
Accession Number: 20080822–0303.
Comment Date: 5 p.m. Eastern Time on Thursday, September 11, 2008.

Docket Numbers: ER08–1398–000.
Applicants: Smoky Hills Wind Project II, LLC.
Description: Smoky Hills Wind Project II, LLC submits an application for order Accepting Market-Based Rate Tariff, Granting Waivers and Blanket Authority.
Filed Date: 08/19/2008.
Accession Number: 20080821–0111.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 9, 2008.

Docket Numbers: ER08–1422–000.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc. submits a filing to revise the day-ahead market process to improve efficiency of resource commitment etc.
Filed Date: 08/18/2008.
Accession Number: 20080821–0105.
Comment Date: 5 p.m. Eastern Time on Monday, September 8, 2008.

Docket Numbers: ER08–1423–000.

Applicants: PHI, Potomac Electric Power Company, Delmarva Power & Light Company, Atlantic City Electric Company.

Description: Pepco Holdings, Inc. submits request for authorization to implement certain rate incentives for its Mid-Atlantic Power Pathway Project.

Filed Date: 08/18/2008.

Accession Number: 20080822–0043.

Comment Date: 5 p.m. Eastern Time on Monday, September 8, 2008.

Docket Numbers: ER08–1424–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits a Network Operating Agreement with PacifiCorp Energy.

Filed Date: 08/19/2008.

Accession Number: 20080821–0117.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 9, 2008.

Docket Numbers: ER08–1425–000.

Applicants: ML Partnership, LLC.

Description: ML Partnership, LLC submits a petition for application for acceptance of initial rate tariff, waivers and blanket authority.

Filed Date: 08/19/2008.

Accession Number: 20080821–0115.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 9, 2008.

Docket Numbers: ER08–1426–000.

Applicants: Green Mountain Power Corporation, Central Vermont Public Service Corp.

Description: Green Mountain Power Corp. submits Notices of Cancellation of a Transmission Service Agreement with Central Vermont Public Service Corp.

Filed Date: 08/19/2008.

Accession Number: 20080821–0116.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 9, 2008.

Docket Numbers: ER08–1427–000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits an executed interconnection service agreement.

Filed Date: 08/18/2008.

Accession Number: 20080821–0110.

Comment Date: 5 p.m. Eastern Time on Monday, September 8, 2008.

Docket Numbers: ER08–1428–000.

Applicants: Public Service Company of New Mexico.

Description: Public Service Company of New Mexico submits Contract TS–08–0042 with Tri-State Generation and Transmission Association.

Filed Date: 08/19/2008.

Accession Number: 20080821–0109.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 9, 2008.

Docket Numbers: ER08–1429–000.

Applicants: Freedom Partners, LLC.

Description: Freedom Energy submits a notice of cancellation.

Filed Date: 08/18/2008.

Accession Number: 20080821–0108.

Comment Date: 5 p.m. Eastern Time on Monday, September 8, 2008.

Docket Numbers: ER08–1430–000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits an executed interconnection service agreement.

Filed Date: 08/18/2008.

Accession Number: 20080821–0107.

Comment Date: 5 p.m. Eastern Time on Monday, September 8, 2008.

Docket Numbers: ER08–1431–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits a letter agreement between SCE and City of Industry.

Filed Date: 08/20/2008.

Accession Number: 20080821–0131.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 10, 2008.

Docket Numbers: ER08–1432–000.

Applicants: MS Solar Solutions Corp.

Description: MS Solar Solutions Corp. submits a notice of succession.

Filed Date: 08/20/2008.

Accession Number: 20080821–0132.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 10, 2008.

Docket Numbers: ER08–1433–000.

Applicants: ISO New England Inc. and New England Power

Description: ISO New England Inc. et al. submit revised tariff sheets and supporting testimony of Peter Harris, Manager of Outage Coordination for the ISO.

Filed Date: 08/20/2008.

Accession Number: 20080821–0133.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 10, 2008.

Docket Numbers: ER08–1434–000.

Applicants: American Electric Power Service Corporation.

Description: American Electric Power System submits Ninth Revised Sheet 252 to Third Revised FERC Electric 6 of the AEP Operating Companies correcting a typographical error.

Filed Date: 08/20/2008.

Accession Number: 20080821–0040.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 10, 2008.

Docket Numbers: ER08–1435–000.

Applicants: Midwest Independent Transmission System Operator.

Description: Midwest Independent Transmission System Operator Inc. submits proposed revisions to Section 43.7.2 Load Switching Under State Programs and Other Transactions etc.

Filed Date: 08/21/2008.

Accession Number: 20080822–0307.

Comment Date: 5 p.m. Eastern Time on Thursday, September 11, 2008.

Docket Numbers: ER08–1436–000.

Applicants: Connecticut Light & Power Company, Northeast Utilities Service Company.

Description: Connecticut Light and Power Company submits a revised Interconnection Agreement by and between CL&P and Capital District Energy Center Associates, designated as First Revised Service Agreement 67.

Filed Date: 08/21/2008.

Accession Number: 20080822–0308.

Comment Date: 5 p.m. Eastern Time on Thursday, September 11, 2008.

Docket Numbers: ER99–2948–015; ER00–2918–014; ER00–2917–014; ER05–261–007; ER01–556–013; ER01–1654–016; ER02–2567–014; ER05–728–007; ER04–485–011; ER07–247–006; ER07–245–006; ER07–244–006.

Applicants: Baltimore Gas and Electric Company, Constellation Power Source Generation, Inc., Calvert Cliffs Nuclear Power Plant, Inc., Constellation Energy Commodities Group, Inc. Handsome Lake Energy, LLC, Nine Mile Point Nuclear Station, LLC, Constellation NewEnergy, Inc., Constellation Energy Commodities Group Maine, LLC, R.E. Ginna Nuclear Power Plant, LLC, Raven One, LLC, Raven Two, LLC, Raven Three, LLC.

Description: Constellation MBR Entities submits their joint market-power analysis update for the Northeast region and certain amendments to their market based rate tariff in Compliance with Order 697.

Filed Date: 08/18/2008.

Accession Number: 20080821–0118.

Comment Date: 5 p.m. Eastern Time on Monday, September 8, 2008.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA07–28–003.

Applicants: Avista Corporation.

Description: Order No. 890 Compliance Filing re Avista Corp.

Filed Date: 08/21/2008.

Accession Number: 20080821–5031.

Comment Date: 5 p.m. Eastern Time on Thursday, September 11, 2008.

Docket Numbers: OA07–35–002.

Applicants: Cleco Power LLC.

Description: Cleco Power LLC submits its Operational Penalties Annual Compliance report concerning Cleco's penalty assessment and distributions since the 7/13/07 effective date of the Order 890 OATT.

Filed Date: 08/18/2008.

Accession Number: 20080821–0130.

Comment Date: 5 p.m. Eastern Time on Monday, September 8, 2008.

Docket Numbers: OA08–125–000.

Applicants: NorthWestern Corporation.

Description: NorthWestern Corporation's Informational Filing of Operational Penalty Assessments and Distributions as Required by Order Nos. 890 and 890–A.

Filed Date: 08/18/2008.

Accession Number: 20080818–5140.

Comment Date: 5 p.m. Eastern Time on Monday, September 8, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–20267 Filed 9–2–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

August 28, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP06–200–049.

Applicants: Rockies Express Pipeline LLC.

Description: Rockies Express Pipeline LLC submits Second Revised Sheet 8C to FERC Gas Tariff, Second Revised Volume 1.

Filed Date: 08/27/2008.

Accession Number: 20080828–0015.

Comment Date: 5 p.m. Eastern Time on Monday, September 08, 2008.

Docket Numbers: RP96–272–079.

Applicants: Northern Natural Gas Company.

Description: Northern Natural Gas Co. submits Ninth Revised Sheet 66B.01 et al. to FERC Gas Tariff, Fifth Revised Volume 1, to be effective 7/1/08.

Filed Date: 08/26/2008.

Accession Number: 20080827–0054.

Comment Date: 5 p.m. Eastern Time on Monday, September 08, 2008.

Docket Numbers: RP08–538–000.

Applicants: El Paso Natural Gas Company.

Description: El Paso Natural Gas Co. submits Third Revised Sheet 202A.01 et al. to FERC Gas Tariff, Second Revised Volume 1A.

Filed Date: 08/25/2008.

Accession Number: 20080826–0301.

Comment Date: 5 p.m. Eastern Time on Monday, September 08, 2008.

Docket Numbers: RP08–539–000.

Applicants: Venice Gathering System, LLC.

Description: Venice Gathering System, LLC submits Eighth Revised Sheet 4 to FERC Gas Tariff, Original Volume 1, to be effective 10/1/08.

Filed Date: 08/25/2008.

Accession Number: 20080827–0053.

Comment Date: 5 p.m. Eastern Time on Monday, September 08, 2008.

Docket Numbers: RP08–540–000.

Applicants: Kern River Gas Transmission Company.

Description: Request for limited waiver of tariff procedures for issuing refunds in the context of capacity release arrangements re Kern River Gas Transmission Co.

Filed Date: 08/26/2008.

Accession Number: 20080826–5084.

Comment Date: 5 p.m. Eastern Time on Monday, September 08, 2008.

Docket Numbers: RP08–541–000.

Applicants: Southern Star Central Gas Pipeline, Inc.

Description: Southern Star Central Gas Pipeline, Inc. submits 1st Revised Ninth Revised Sheet 11 to FERC Gas Tariff, Original Volume 1.

Filed Date: 08/26/2008.

Accession Number: 20080827–0296.

Comment Date: 5 p.m. Eastern Time on Monday, September 08, 2008.

Docket Numbers: RP08–542–000.

Applicants: Northern Border Pipeline Company.

Description: Northern Border Pipeline Co. submits Twelfth Revised Sheet 99 to FERC Gas Tariff, First Revised Volume 1, effective 10/1/08.

Filed Date: 08/26/2008.

Accession Number: 20080827–0295.

Comment Date: 5 p.m. Eastern Time on Monday, September 08, 2008.

Docket Numbers: RP08–543–000.

Applicants: Carolina Gas Transmission Corporation.

Description: Carolina Gas Transmission Corporation submits Third Revised Sheet 10 et al. to FERC Gas Tariff, Volume 1, to be effective 10/1/08.

Filed Date: 08/27/2008.

Accession Number: 20080828–0016.

Comment Date: 5 p.m. Eastern Time on Monday, September 08, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://*

www.ferc.gov. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–20456 Filed 9–2–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[OA08–33–000, etc.]

Arizona Public Service Company, et al.; Notice of Staff Participation in Meeting of Western Electric Coordinating Council's Transmission Expansion Planning Policy Committee

August 26, 2008.

Arizona Public Service Company	OA08–33–000
Avista Corporation	OA08–25–000
Black Hills Power, Inc	OA08–43–000
	OA08–99–000
	OA08–99–001
Deseret Generation & Transmission Co-operative Inc	OA08–28–000
	OA08–54–000
	OA08–54–001
	OA08–54–002
El Paso Electric Co	OA08–30–000
Idaho Power Company	OA08–23–000
	OA08–55–000
	OA08–55–001
	OA08–55–002
NorthWestern Corporation	OA08–31–000
	OA08–31–001
	OA08–56–000
	OA08–56–001
	OA08–56–002
PacifiCorp	OA08–40–000
	OA08–57–000
	OA08–57–001
	OA08–57–002
Portland General Electric, Inc	OA08–45–000
	OA08–45–001
	OA08–118–000
Public Service Company of New Mexico	OA08–34–000
Puget Sound Energy, Inc	OA08–26–000
Sierra Pacific Resources Operating Companies	OA08–38–000
Tucson Electric Power Company	OA08–47–000
Xcel Energy Services, Inc.—Public Service Company of Colorado	OA08–35–000
United States Department of Energy—Bonneville Power Administration	NJ08–5–000
UNS Electric, Inc	OA08–48–000

Notice of Staff Participation in Meeting of Western Electric Coordinating Council's Transmission Expansion Planning Policy Committee

The Federal Energy Regulatory Commission (Commission) hereby gives notice that on September 9, 2008, members of its staff will participate in person or via conference call in a coordination meeting of the Sub-Regional Planning Group of the Western Electric Coordinating Council's Transmission Expansion Planning Policy Committee (TEPPC). The meeting may discuss matters at issue in the above-referenced dockets. Staff's participation in this meeting is part of the Commission's ongoing outreach efforts regarding compliance with the planning-related requirements of Order No. 890.[1]

Sponsored by the TEPPC Sub-Regional Planning Group, the meeting will be held from 9 a.m. to 1 p.m. (PST) at the Marriott University Park Hotel, 480 Wakara Way, Salt Lake City, UT 84108. The meeting is open to all stakeholders, who may attend in person or via teleconference and Web conference, as follows:

To attend via teleconference, dial (503) 813–5600 or (800) 503–3360 and use Meeting ID 987654 and password 123456.

To attend via Web conference, navigate to *https://meetusat.pacificorp.com,* enter Meeting ID 987654, click attend meeting and follow instructions.

For more information about Commission staff's participation in this meeting, please contact Mason Emnett

[1] *Preventing Undue Discrimination and Preference in Transmission Service,* Order No. 890, 72 FR 12,266 (March 15, 2007), FERC Stats. & Regs. ¶ 31,241, *order on reh'g,* Order No. 890–A, 73 FR 2984 (January 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g,* Order No. 890–B, 73 FR 39,092 (July 8, 2008).

at *mason.emnett@ferc.gov* or (202) 502–6540.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–20261 Filed 9–2–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0004; FRL–8380–3]

Access to Confidential Business Information by Industrial Economics, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Industrial Economics, Inc. of Cambridge, MA, to access information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data will occur no sooner than September 10, 2008.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Scott M. Sherlock, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8257; fax number: (202) 564–8251; e-mail address: *sherlock.scott@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to you if you are conducting, or may be required to conduct, testing of chemical substances under the Toxic Substances Control Act (TSCA). Since other entities may also 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 technical 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–OPPT–2003–0004. All documents in the docket are listed in the docket's 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, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) in Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The A/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket Facility is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

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. What Action is the Agency Taking?

Under GSA Contract Number GS10F0224J, contractor, Industrial Economics, Inc. of 2067 Massachusetts Avenue, Cambridge, MA, will assist the Office of Pollution Prevention and Toxics (OPPT) in providing economic analysis support for EPA's enforcement actions.

In accordance with 40 CFR 2.306(j), EPA has determined that under GSA Contract Number GS10F0224J, Industrial Economics, Inc. will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. Industrial Economics, Inc. personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide Industrial Economics, Inc. access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and Industrial Economics, Inc. site in Cambridge, MA.

Industrial Economics, Inc. will be authorized access to TSCA CBI at EPA Headquarters and at the Industrial Economics, Inc. facility, provided they comply with the provisions of the EPA *TSCA CBI Protection Manual*. Before access to TSCA CBI is authorized at Industrial Economic's site, EPA will perform the required inspection of the facility and ensure that the facility is in compliance with the Manual.

Access to TSCA data, including CBI, will continue until October 31, 2009. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

Industrial Economics, Inc. personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental Protection, Confidential Business Information.

Dated: August 25, 2008.

Todd S. Holderman,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. E8–20130 Filed 9–2–08; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2004–0228; FRL–8710–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Reporting and Recordkeeping Requirements Under the Perfluorocompound (PFC) Reduction/Climate Partnership for the Semiconductor Industry; EPA ICR No. 1823.04, OMB Control No. 2060–0382

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.), this document

announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to reinstate a previously approved ICR. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before October 3, 2008.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2004–0228, to (1) EPA online using *www.regulations.gov* (our preferred method), by e-mail to *a-and-r-Docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Scott Bartos, Office of Atmospheric Programs, Climate Change Division (6207J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–343–9167; fax number: 202–343–2202; e-mail address: *bartos.scott@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On March 11, 2008 (73 FR 12996), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2004–0228, which is available for online viewing at *www.regulations.gov*, or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: Reporting and Recordkeeping Requirements under the Perfluorocompound (PFC) Reduction/Climate Partnership for the Semiconductor Industry

ICR numbers: EPA ICR No. 1823.04, OMB Control No. 2060–0382

ICR Status: This ICR expired on March 31, 2008. 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. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9 and are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The U.S. Environmental Protection Agency's (EPA's) PFC Reduction/Climate Partnership for the Semiconductor Industry is a voluntary program that promotes reduction of perfluorocompounds (PFCs). PFCs are the most potent greenhouse gases (GHG) known, with atmospheric lifetimes of up to 50,000 years. These unique chemical compounds are required during two critical semiconductor manufacturing steps: Plasma etching and CVD chamber cleaning. EPA's Partnership uses a pollution prevention approach to reduce greenhouse gas emissions and tracks progress by collecting annual PFC emissions estimates from voluntary participants. Partnership Companies have committed to reduce their PFC emissions 10 percent below their 1995 baseline level by 2010. As a Partner to the industry, EPA serves as a clearinghouse of technical information on successful strategies for reducing PFC emissions that are economically, technically, and environmentally sound. EPA also helps assess the global warming potential of potential substitute chemicals and publicly recognizes the Partner Companies' achievements.

Participation in the program begins with completion of a Memorandum of Understanding (MOU) that outlines responsibilities of the PFC Reduction/Climate Partnership. By joining the Partnership, a Company agrees to submit a Company-specific annual report, identifying an overall estimate of PFC emissions by gas, to a third party designated by the participating Companies. The MOU also specifies that the Partner Company will direct the designated third party to create a confidential data depository for the information supplied by the Partner Company. In addition, the MOU states that the Partner Company will direct the designated third party to prepare an industry-wide annual report, to be submitted to EPA, that aggregates PFC emissions estimates, and provides each Partner Company's annual emissions by gas on a ''blind'' or anonymous basis. The Partner Company also agrees to share with EPA and others in the semiconductor industry information about successful PFC emission reduction processes and technologies that the Partner Company considers nonconfidential. This MOU applies only to PFC emissions originating from U.S. semiconductor manufacturing sites and can be terminated by either Party 30 days after the receipt of written notice by the other Party with no penalties or continuing obligations.

Using the information provided through the Partnership, the EPA is able to (1) evaluate the overall PFC emission reductions achieved by the voluntary program, (2) develop estimates for the total U.S. semiconductor emissions, (3) identify new technologies or processes that reduce PFC emissions, and (4) serve as a technical clearing-house to provide industry with pertinent information on emissions estimation and reduction strategies. The Partnership data is a valuable resource for evaluating current and promoting future GHG emissions reductions within the semiconductor industry.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 544 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing

and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Semiconductor manufacturing companies.

Estimated Number of Respondents: 21.

Frequency of Response: Annually.

Estimated Total Annual Hour Burden: 11,426.

Estimated Total Annual Cost: $938,461, which includes $116,319 annualized capital or O&M costs and $822,142 in labor costs.

Changes in the Estimates: There is an increase of 11,426 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens, which reflect the burden for reinstating the entire program. EPA has not collected under this ICR since it expired in March 2008. There is a decrease of 1,624 hours from the last time this ICR was approved. This is because the number of respondents decreased from 24 to 21.

Dated: August 27, 2008.

Sara Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. E8–20393 Filed 9–2–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2008–0294; FRL–8710–6]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Sulfuric Acid Plants (Renewal), EPA ICR Number 1057.11, OMB Control Number 2060–0041

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before October 3, 2008.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2008–0294, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 30, 2008 (73 FR 31088), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2008–0294, which is available for public viewing online at *http://www.regulations.gov*, in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1927.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper will be made available for public viewing at *http://www.regulations.gov*, as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: NSPS for Sulfuric Acid Plants (Renewal).

ICR Numbers: EPA ICR Number 1057.11, OMB Control Number 2060–0041.

ICR Status: This ICR is schedule to expire on October 31, 2008. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. 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. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The New Source Performance Standards (NSPS) for Sulfuric Acid Plants were proposed on August 17, 1971, and promulgated on December 23, 1971. These standards apply to any sulfuric acid facility commencing construction, modification or reconstruction after the date of proposal. The control of sulfur dioxide (SO_2) and acid mist requires not only the installation of properly designed equipment, but also the proper operation and maintenance of that equipment. Sulfur dioxide and acid mist emissions from sulfuric acid plants result from the burning of sulfur or sulfur-bearing feed-stock to form SO_2, catalytic oxidation of SO_2 to sulfur trioxide, and absorption of SO_2 in a strong acid stream. These standards rely on the capture of SO_2 and acid mist by venting to a control device.

Owners or operators of sulfuric acid plants are required to make the following one-time-only reports, notification of the date of construction or reconstruction, notification of actual startup dates, notification of any physical or operational change to an existing facility, and notification of demonstration of the continuous emissions monitoring system (CEMS).

Owners and operators must also submit notification date of the initial performance test, and the results of the initial performance test. After the initial recordkeeping and reporting requirements, semiannual reports are required if there has been an exceedance of control device operating parameters. Respondents are also required to maintain records of occurrence and duration of any startup, shutdown, or malfunction, or any period during which the monitoring system is inoperative.

Notifications are to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to ensure that the pollution control devices are properly installed and operating and that the standards are being met. Performance test reports are required as these are the Agency's records of a sources' initial capability to comply with the emission standards and to serve as a record of the operating conditions under which compliance are to be achieved. The information generated by monitoring, recordkeeping and reporting requirements described in this ICR are used by the Agency to ensure that facilities that are affected by the standard continue to operate the control equipment and achieve continuous compliance with the regulation.

All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 60, subpart H, as authorized in sections 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined to be private.

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. The OMB Control Number for EPA's regulations listed in 40 CFR part 9 and 48 CFR chapter 15 is identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information estimated to average 127 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose and provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information. All existing ways will have to adjust to comply with any previously applicable instructions and requirements that have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Sulfuric acid plants.

Estimated Number of Respondents: 103.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 26,177.

Estimated Total Annual Cost: $2,576,771, which includes $463,500 O&M costs and $2,113,271 labor costs.

Changes in the Estimates: There is no change in the labor hours or cost in this ICR compared to the previous ICR. This is due to two considerations: (1) The regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for the industry is very low, negative or non-existent, so there is no significant change in the overall burden. It should be noted that the previous ICR rounded the burden cost up to the nearest one thousand. In this ICR, the exact cost figure is reported which results in an apparent decrease in the cost when, in fact, no decrease has occurred.

Since there are no changes in the regulatory requirements and there is no significant industry growth, the labor hours and cost figures in the previous ICR was used in this ICR, and there is no change in burden to industry.

Dated: August 27, 2008.

Sara Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. E8–20396 Filed 9–2–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–1004; FRL–8378–9]

Final Guidance for Pesticide Registrants on Antimicrobial Pesticide Products With Anthrax-Related Claims

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Agency is announcing the availability of a Pesticide Registration Notice (PR Notice) entitled ''Antimicrobial Pesticide Products With Anthrax-Related Claims.'' This PR Notice was issued by the Agency on [*insert date PR Notice is signed by the OD*] and is identified as PR Notice 2008–2. PR Notices are issued by the EPA's Office of Pesticide Programs (EPA/OPP) to inform pesticide registrants and other interested persons about important policies, procedures, and registration related decisions, and serve to provide guidance to pesticide registrants and OPP personnel. This particular PR Notice provides guidance pertaining to applications of registration for antimicrobial products that would make labeling claims to inactivate *Bacillus anthracis* (anthrax) spores (hereafter referred to as ''anthrax-related products'').

FOR FURTHER INFORMATION CONTACT: Jeff Kempter, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703–305–5448; fax number: 703–308–6467; e-mail address: *kempter.carlton@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me

This action is directed to the public in general although this action may be of particular interest to those persons who are required to register pesticides and federal, state, and local government agencies and private institutions or organizations who are interested in bio-decontamination chemicals. Since other entities may also 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 information in this notice, 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–2008–1004. 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. What Guidance Does this PR Notice Provide?

This final PR Notice provides guidance pertaining to applications for registration of antimicrobial products that would make labeling claims to ''inactivate *Bacillus anthracis* (anthrax) spores'' (hereafter referred to as ''anthrax-related products''). This guidance should help the United States be prepared to respond to incidents involving anthrax spores by assuring that anthrax-related products are registered, that they bear appropriate labeling, and that they are effective when used as directed. In addition, this guidance will help protect public health from the potential risks of anthrax spores by limiting the use of anthrax-related products to those who are properly trained and determined to be competent in their use.

In summary, this PR notice specifies that in order for a product to qualify for a claim of inactivating anthrax spores, an anthrax-related product should be: (a) supported by specific sporicidal efficacy studies that are acceptable to EPA and (b) subject to specific terms and conditions of registration that limit the use of these products to certain persons. Prospective applicants are encouraged to follow the guidance in this notice and consult with EPA prior to applying for registration or amendment of a product when seeking such a claim.

In October 2001, when several letters containing *Bacillus anthracis* (anthrax) spores were introduced into the U.S. Postal Service mail system, no antimicrobial products were specifically registered for inactivating the spores of this particular pathogen. Since that time, EPA/OPP has developed guidance on the terms and conditions of registration for the labeling of these products that will limit their use to certain persons, as described below. In addition, the EPA/OPP has developed guidance on laboratory efficacy test methods for demonstrating the effectiveness of antimicrobial products for inactivating anthrax spores on inanimate surfaces. Such efficacy testing guidance will be issued separately from this PR Notice. It is EPA's intent that registrants will follow the efficacy testing guidance and this PR Notice when applying for registration of anthrax-related products, and that such products, when registered, will be made available to trained and competent civilian and military personnel who respond to incidents involving anthrax spores.

The information collection activities associated with the activities described in this PR Notice are already approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq. The corresponding Information Collection Request (ICR) document for the training of pesticide applicators has been assigned EPA ICR number 0155.09 and is approved under OMB control number 2070–0029. The ICR document for the pesticide application process has been assigned EPA ICR number 0277.13, and is approved under OMB control number 2070–0060. The total estimated respondent paperwork burden associated with the training and certification of a pesticide applicator is an annual average of 3.1 burden hours. The annual average reporting and recordkeeping burden for a registration applicant respondent is estimated to range from 14 hours to 646 hours, depending upon the type of activity. For ''Type A'' activities, which include new active ingredients and new uses, the estimated annual applicant burden average is 194 hours per application. For ''Type B'' activities, which include amendments and notifications, the estimated annual applicant burden average is 14 hours per application. The respondent burden estimate for ''Type C'' reduced risk products is an average of 646 hours per product. A copy of the most recent version of EPA ICR #0155.09 is available under Docket ID No. EPA–HQ–OPP–2003–0357, and a copy of the most recent version of EPA ICR #0277.13 is available under Docket ID No. EPA–HQ–OPP–2004–0419. Both dockets may be accessed at *www.regulations.gov*.

III. Do PR Notices Contain Binding Requirements?

The PR Notice discussed in this notice is intended to provide general guidance to pesticide applicants and registrants. While the requirements in the statutes and Agency regulations are binding on EPA, registrants, and applicants, this PR Notice is not binding on either EPA or any outside parties, and EPA may depart from the guidance where circumstances warrant and without prior notice. Likewise, pesticide applicants and registrants may assert that the guidance is not appropriate generally or not applicable to a specific pesticide or situation. Pesticide applicants and registrants may propose alternatives to the recommendations described in the PR Notice, and the Agency will assess them for appropriateness on a case-by-case basis and will respond in writing.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Anthrax, Decontamination, Pesticides and pests.

Dated: August 26, 2008.

Debra Edwards,

Director, Office of Pesticide Programs.

[FR Doc. E8–20384 Filed 9–2–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2008–0200; FRL–8710–3]

Board of Scientific Counselors, Water Quality Mid-Cycle Subcommittee Meeting—2008

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency, Office of Research and Development (ORD), gives notice of a meeting of the Board of Scientific Counselors (BOSC) Water Quality Mid-Cycle Subcommittee.

DATES: The meeting will be held on Tuesday, September 23, 2008 from 9 a.m. to 3 p.m. Eastern Standard Time. The meeting may adjourn early if all business is finished. Requests for the draft agenda or for making oral presentations at the conference call will be accepted up to one business day before the meeting.

ADDRESSES: The meeting will be held at the Key Bridge Marriott, 1401 Lee Highway, Arlington, Virginia 22209. Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2008–0200, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* Send comments by electronic mail (e-mail) to: *ORD.Docket@epa.gov*, Attention Docket ID No. EPA–HQ–ORD–2008–0200.
- *Fax:* Fax comments to: (202) 566–0224, Attention: Docket ID No. EPA–HQ–ORD–2008–0200.
- *Mail:* Send comments by mail to: Board of Scientific Counselors, Water Quality Mid-Cycle Subcommittee—2008

Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention: Docket ID No. EPA–HQ–ORD–2008–0200.

• *Hand Delivery or Courier:* Deliver comments to: EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention: Docket ID No. EPA–HQ–ORD–2008–0200.

Note: This is not a mailing address. 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–ORD–2008–0200. 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 Board of Scientific Counselors, Water Quality Mid-Cycle Subcommittee—2008 Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer via mail at: Susan Peterson, Mail Code 8104–R, Office of Science Policy, Office of Research and Development, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via phone/voice mail at: (202) 564–1077; via fax at: (202) 565–2911; or via e-mail at: *peterson.susan@epa.gov*.

SUPPLEMENTARY INFORMATION:

General Information

Any member of the public interested in receiving a draft BOSC agenda or making a presentation at the meeting may contact Susan Peterson, the Designated Federal Officer, via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section above. In general, each individual making an oral presentation will be limited to a total of three minutes.

Proposed agenda items for the meeting include, but are not limited to: overview of the charge to the subcommittee, discussion of the bibliometric analysis, report on wrap-up of the 2003 Water Quality Multi-Year Plan (MYP), and research survey results. The meeting is open to the public.

Information on Services for Individuals with Disabilities: For information on access or services for individuals with disabilities, please contact Susan Peterson at (202) 564–1077 or *peterson.susan@epa.gov*. To request accommodation of a disability, please contact Susan Peterson, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: August 26, 2008.

Fred Hauchman,

Director, Office of Science Policy.

[FR Doc. E8–20386 Filed 9–2–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2008–0200; FRL–8710–4]

Board of Scientific Counselors, Water Quality Mid-Cycle Subcommittee Meeting—2008

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Cancellation of Meeting.

SUMMARY: The Environmental Protection Agency, Office of Research and Development (ORD), announces the cancellation of a meeting of the Board of Scientific Counselors (BOSC) Water Quality Mid-Cycle Subcommittee. This meeting, a teleconference September 15, 2008, was announced in a **Federal Register** Notice published on Friday, August 15, 2008 (73 FR 47949). The purpose of this meeting was to prepare for the September 23 face-to-face meeting of the subcommittee. The proposed agenda topics will be covered during the September 4, 2008 meeting (telecon).

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer via mail at: Susan Peterson, Mail Code 8104–R, Office of Science Policy, Office of Research and Development, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via phone/voice mail at: (202) 564–1077; via fax at: (202) 565–2911; or via e-mail at: *peterson.susan@epa.gov*.

Dated: August 26, 2008.

Fred Hauchman,

Director, Office of Science Policy.

[FR Doc. E8–20387 Filed 9–2–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8711–2]

Meeting of the Total Coliform Rule Distribution System Advisory Committee—Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Under Section 10(a)(2) of the Federal Advisory Committee Act, the United States Environmental Protection Agency (EPA) is giving notice of a meeting of the Total Coliform Rule Distribution System Advisory Committee (TCRDSAC). The purpose of this meeting is to discuss the Total Coliform Rule (TCR) revision and

information about distribution systems issues that may impact water quality.

The TCRDSAC advises and makes recommendations to the Agency on revisions to the TCR, and on what information should be collected, research conducted, and/or risk management strategies evaluated to better inform distribution system contaminant occurrence and associated public health risks.

During this meeting the TCRDSAC will discuss the Committee's revisions to the draft Agreement in Principle (AIP), which includes recommended revisions to the TCR and recommendations for research and information collection to better understand and address possible public health impacts from potential degradation of drinking water quality in the distribution system.

DATES: The public meeting will be held on Thursday, September 18, 2008 (9 a.m. to 5 p.m., Eastern Time (ET)). The Agency expects to conclude discussions on the AIP on September 18; however, if discussions are not completed on September 18, the TCRDSAC will also meet on Friday, September 19, beginning at 9 a.m. (ET) to finalize discussions. Attendees should register for the meeting by calling Kate Zimmer at (202) 965–6387 or by e-mail to *kzimmer@resolv.org* no later than September 12, 2008.

ADDRESSES: The meeting will be held at The Churchill Hotel, 1914 Connecticut Ave., NW., Washington, DC 20009.

FOR FURTHER INFORMATION CONTACT: For general information, contact Kate Zimmer of RESOLVE at (202) 965–6387. For technical inquiries, contact Sean Conley (*conley.sean@epa.gov*, (202) 564–1781), Standards and Risk Management Division, Office of Ground Water and Drinking Water (MC 4607M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; fax number: (202) 564–3767.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The Committee encourages the public's input and will take public comment starting at 11:30 a.m. on September 18, 2008, for this purpose. It is preferred that only one person present the statement on behalf of a group or organization. To ensure adequate time for public involvement, individuals interested in presenting an oral statement may notify Crystal Rodgers-Jenkins, the Designated Federal Officer, by telephone at (202) 564–5275, no later than September 12, 2008. Any person who wishes to file a written statement can do so before or after a Committee meeting. Written statements received by September 12, 2008, will be distributed to all members before any final discussion or vote is completed. Any statements received on or after September 13, 2008, will become part of the permanent meeting file and will be forwarded to the members for their information.

Special Accommodations

For information on access or accommodations for individuals with disabilities, please contact Crystal Rodgers-Jenkins at (202) 564–5275 or by e-mail at *rodgers-jenkins.crystal@epa.gov*. Please allow at least 10 days prior to the meeting to give EPA time to process your request.

Dated: August 28, 2008.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. E8–20394 Filed 9–2–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008-0610; FRL–8378–1]

Nosema locustae Registration Review Proposed Decision; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's proposed registration review decision for the pesticides case, *Nosema locustae,* and opens a public comment period on the proposed registration review decision. 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 November 3, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) numbers EPA–HQ–OPP–2007–0997 for *Nosema locustae*, 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 the docket ID number and the regulatory contact listed under Table 1 for the case 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 biopesticides included in this document, contact the specific Regulatory contact, as identified in the Table in Unit II.A. for the biopesticide of interest. The mailing address and additional contact information is Biopesticides and Pollution Prevention Division, (7511P); Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8712; fax number: (703) 308–7026.

For general questions on the registration review program, contact Peter Caulkins, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6550; fax number: (703) 308–8090; e-mail address: *caulkins.peter@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 decision. The Agency is proposing a registration review decision for the pesticide case shown in the following Table 1.

TABLE 1.—REGISTRATION REVIEW DOCKETS; PROPOSED FINAL DECISIONS

Registration Review Case Name and Number	Pesticide Docket ID Number	Regulatory Contact name, Phone Number, E-mail Address
Nosema locustae; Case 4104	EPA–HQ–OPP–2007–0997	Jeannine Kausch (703) 347–8920; *kausch.jeannine@epa.gov*

The docket for registration review of this pesticide case includes earlier documents related to the registration review of the subject case. For example, the review opened with the posting of a Summary Document, containing a Preliminary Work Plan (PWP), for public comment. A Final Work Plan (FWP) was posted to the docket following public comment on the initial docket. The documents in the initial docket described the Agency's rationales for not conducting new risk assessments for the registration review of Nosema locustae. This proposed registration review decision now included in the docket continues to be supported by those rationales included in documents in the initial docket. Following public comment, the Agency will issue a final registration review decision for this 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 155.40.

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. 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 Docket for *Nosema locustae*. 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/*. Additional information about biopesticides can be obtained by an alphabetical search of the Biopesticide Active Ingredient Fact Sheets on *http://www.epa.gov/oppbppd1/biopesticides/ingredients/index.htm*

B. What is the Agency's Authority for Taking this Action?

FIFRA Section 3(g) and 40 CFR 155.40 provide authority for this action.

List of Subjects

Environmental protection, registration review, pesticides, and pests.

Dated: August 21, 2008.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E8–20395 Filed 9–2–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–1072; FRL–8346–4]

Pesticide Reregistration Performance Measures and Goals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's progress in meeting its performance measures and goals for pesticide reregistration during fiscal year 2007. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requires EPA to publish information about EPA's annual achievements in this area. This notice discusses the integration of tolerance reassessment with the reregistration process, and describes the status of various regulatory activities associated with reregistration and tolerance reassessment. The notice gives total numbers of chemicals and products reregistered, tolerances reassessed, Data Call-Ins issued, and products registered under the ''fast-track'' provisions of FIFRA. This notice also contains the schedule for completion of activities for specific chemicals during fiscal year 2008.

DATES: This notice is not subject to a formal comment period. Nevertheless, EPA welcomes input from stakeholders and the general public. Written comments, identified by the docket identification (ID) number [EPA–HQ–OPP–2007–1072], should be received on or before November 3, 2008.

ADDRESSES: Submit your comments, identified by docket ID number EPA–HQ–OPP–2007–1072, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov/*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2007–1072. EPA's policy is that all comments received will be included in the public 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 captured automatically 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/docket.htm/*.

Docket: All documents in the docket are listed in the index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Carol P. Stangel, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460;

telephone: (703) 308–8007; e-mail: *stangel.carol@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who are interested in the progress and status of EPA's pesticide reregistration and tolerance reassessment programs, 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 information in this notice, 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, obscene language, or personal threats.

viii. Make sure to submit your comments by the comment period deadline.

II. Background

EPA must establish and publish in the **Federal Register** its annual performance measures and goals for pesticide reregistration, tolerance reassessment, and expedited registration, under section 4(l) of FIFRA, 7 U.S.C. 136a-1(l). Specifically, such measures and goals are to include:

- The status of reregistration.
- The number of products reregistered, canceled, or amended.
- The number and type of data requests or Data Call-In (DCI) notices under FIFRA section 3(c)(2)(B) issued to support product reregistration by active ingredient.
- Progress in reducing the number of unreviewed, required reregistration studies.
- The aggregate status of tolerances reassessed.
- The number of applications for registration submitted under subsection (k)(3) (which provides for expedited processing and review of similar applications), that were approved or disapproved.
- The future schedule for reregistrations in the current and succeeding fiscal year.
- The projected year of completion of the reregistrations under section 4.

FIFRA authorizes EPA to conduct a comprehensive pesticide reregistration program--a complete review of the human health and environmental effects of older pesticides originally registered before November 1, 1984. Pesticides meeting today's scientific and regulatory standards may be declared ''eligible'' for reregistration. To be eligible, an older pesticide must have a substantially complete data base, and must not cause unreasonable adverse effects to human health or the environment when used according to Agency approved label directions and precautions.

In addition, all pesticides with food uses must meet the safety standard of section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA) 21 U.S.C. 346a. Under FFDCA, EPA must make a determination that pesticide residues remaining in or on food are ''safe''; that is, ''that there is reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue'' from dietary and other sources. In determining allowable levels of pesticide residues in food, EPA must, among other requirements, perform a comprehensive assessment of each pesticide's risks, considering:

- Aggregate exposure (from food, drinking water, and residential uses).
- Cumulative effects from all pesticides sharing a common mechanism of toxicity.
- Possible increased susceptibility of infants and children.
- Possible endocrine or estrogenic effects.

The 1996 FFDCA amendments also required the reassessment of all existing tolerances (pesticide residue limits in food) and tolerance exemptions within 10 years, to ensure that they met the safety standard of the law. EPA was directed to give priority to the review of those pesticides that appeared to pose the greatest risk to public health. The Agency completed over 99% of the required tolerance reassessment decisions by August 3, 2006, and upon concluding the N-methyl carbamate cumulative risk assessment, completed all 9,721 tolerance reassessment decisions in September 2007. These decisions represent significant enhancements in public health and environmental protection. By successfully implementing this provision of FFDCA, EPA is ensuring that all pesticides used on food in the United States meet the law's safety standard. EPA's approach to tolerance reassessment under FFDCA was described fully in the Agency's document, ''Raw and Processed Food Schedule for Pesticide Tolerance Reassessment'' (62 FR 42020, August 4, 1997) (FRL–5734–6).

The Pesticide Registration Improvement Act (PRIA) of 2003 became effective on March 23, 2004 (7 U.S.C. 136w–8). Among other things, PRIA directed EPA to complete Reregistration Eligibility Decisions (REDs) for pesticides with food uses/tolerances by August 3, 2006, and to complete all non-food use pesticide REDs by October 3, 2008. The Agency completed 99% of the REDs for pesticides with food uses due by August 3, 2006, and plans to complete all remaining REDs by October 3, 2008. EPA's schedule for meeting these deadlines is available on the Agency's website at *http://www.epa.gov/pesticides/reregistration/decision_schedule.htm.*

III. Program Accountability

Through this summary of performance measures and goals for pesticide reregistration, tolerance reassessment, and expedited registration, EPA describes progress made during the past year in each of the

program areas included in FIFRA section 4(l).

A. Status of Reregistration

During fiscal year (FY) 2007 (from October 1, 2006, through September 30, 2007), EPA made significant progress in completing risk assessments and risk management decisions for pesticide reregistration. The Agency's decisions are embodied in RED documents. (See Table 1).

TABLE 1.—REREGISTRATION/RISK MANAGEMENT DECISIONS COMPLETED: IN FY 2007 AND FY 1991 THROUGH FY 2007

FY 2007 Decisions	Total, FY 1991 through FY 2007
27 FY 2007 REDs Aldicarb Aliphatic alcohols, C6-C16 Aliphatic esters Alkyl trimethylenediamines Allethrin stereoisomers 4-Aminopyridine Antimycin A Benzoic acid Bioban-p-1487 Bromonitrostyrene (Voluntary cancellation) Carbaryl Carbofuran (2006 IRED became a RED) Chlorflurenol 2,4-DP-p (dichlorprop-p) Dikegulac sodium Flumetralin Formetanate hydrochloride (2006 IRED became a RED) Glutaraldehyde MCPP-p (mecoprop-p) Mefluidide Naphthenate salts Octhilinone Oxamyl (2000 IRED became a RED) p-Dichlorobenzene (paradichlorobenzene) Polypropylene glycol Rotenone Trimethoxysilyl quats	**357 REDS**

Through the reregistration program, EPA is reviewing current scientific data for older pesticides (those initially registered before November 1984), reassessing their effects on human health and the environment, and requiring risk mitigation measures as necessary. Pesticides that have sufficient supporting data and whose risks can be successfully mitigated may be declared ''eligible'' for reregistration. EPA presents these pesticide findings in a RED document.

Three of the FY 2007 REDs were for the N-methyl carbamate pesticides carbofuran, formetanate hydrochloride, and oxamyl. EPA completed Interim REDs for these pesticides in earlier years. With completion of the N-methyl carbamate cumulative risk assessment in September 2007, these last Interim REDs became final REDs. Additional information is available on EPA's Assessing Pesticide Cumulative Risk web page, *http://www.epa.gov/pesticides/cumulative/*.

1. *Overall RED progress*. EPA's overall progress at the end of FY 2007 in completing REDs for groups of related pesticide active ingredients or cases is summarized in Table 2.

TABLE 2.—OVERALL RED PROGRESS, FY 1991 THROUGH FY 2007

REDs completed	357 (58%)
Cases canceled	229 (37%)
REDs to be completed	27 (5%)
Total reregistration cases	613 (100%)

2. *Risk reduction in REDs*. Through the reregistration program, EPA seeks to reduce risks associated with the use of older pesticides. In developing REDs, EPA works with stakeholders including pesticide registrants, growers and other pesticide users, and environmental and public health interests groups, as well as the States and Tribes, USDA and other Federal agencies, and other entities to develop measures to effectively reduce risks of concern. Almost every RED includes some measures or modifications in how a pesticide can be legally used to reduce risks. The options for such risk reduction are extensive and include voluntary cancellation of pesticide products or deletion of uses; declaring certain uses ineligible or not yet eligible (and then proceeding with follow-up action to cancel the uses or require additional supporting data); restricting use of products to certified applicators; limiting the amount or frequency of use; improving use directions and precautions; requiring more protective clothing and equipment; requiring special packaging or engineering controls; requiring no-treatment buffer zones; employing ground water, surface water, or other environmental and ecological safeguards; and other measures.

3. *Goal for FY 2008*. EPA's goal in conducting the reregistration program is to complete the remaining 27 REDs during FY 2008. EPA's schedule for completing these decisions appears in Unit III.G., and also is available on the Agency's website at *http://www.epa.gov/pesticides/reregistration/decision_schedule.htm*.

B. Product Reregistration; Numbers of Products Reregistered, Canceled, and Amended

At the end of the reregistration process, after EPA has issued a RED and declared a pesticide reregistration case eligible for reregistration, individual end-use products that contain pesticide active ingredients included in the case still must be reregistered. This concluding part of the reregistration process is called ''product reregistration.''

In issuing a completed RED document, EPA sends registrants a DCI notice requesting any product-specific data and specific revised labeling needed to complete reregistration for each of the individual pesticide products covered by the RED. Based on the results of EPA's review of these data and labeling, products found to meet FIFRA and FFDCA standards may be reregistered.

A variety of outcomes are possible for pesticide products completing this final phase of the reregistration process. Ideally, in response to the DCI notice, the pesticide producer, or registrant, will submit the required product-specific data and revised labeling, which EPA will review and find acceptable. At that point, the Agency may reregister the pesticide product. If, however, the product contains multiple active ingredients, the Agency instead would first require the registrant to amend the product's registration, incorporating the labeling changes specified in the RED as interim measures. A product with multiple active ingredients may not be fully reregistered until the last active ingredient in its formulation is eligible for reregistration. In other situations, the Agency may temporarily suspend a product's registration if the registrant has not submitted required product-specific studies within the time frame specified. The Agency may cancel a product's registration because the registrant did not pay the required registration maintenance fee. Alternatively, the registrant may request a voluntary cancellation of their end-use product registration.

EPA counts each of the post-RED product outcomes described above as a product reregistration action. A single pesticide product may be the subject of several product reregistration actions within the same year. For example, a product's registration initially may be amended, then the product may be reregistered, or the product may first be suspended and later it may be

voluntarily canceled. EPA also keeps track of the status of the universe of pesticide products subject to reregistration, that is, the overall number of products reregistered, amended, canceled, and sent for suspension, as well as the number of products with actions pending, as of the end of each fiscal year.

In response to May 2008 draft findings and recommendations by EPA's Office of the Inspector General resulting from the annual FIFRA Financial Statements Audit, the EPA Office of Pesticide Programs (OPP) is reviewing and strengthening its internal processes and controls for handling and electronically managing information concerning product reregistration actions and accomplishments. OPP expects to complete this review by December 31, 2008. In next year's Performance Measures and Goals **Federal Register** notice reporting on actions completed in FY 2008, the Agency plans to provide numbers of product reregistration actions completed in FY 2007 and in FY 2008.

EPA's goal is to complete 1,000 product reregistration actions during FY 2008.

C. Number and Type of DCIs to Support Product Reregistration by Active Ingredient

The number and type of product-specific Data Call-In (PDCI) requests that EPA is preparing to issue under FIFRA section 3(c)(2)(B) to support product reregistration for pesticide active ingredients included in FY 2007 REDs are shown in Table 3.

TABLE 3.—DCIS TO SUPPORT PRODUCT REREGISTRATION FOR FY 2007 REDS

Case Name	Case No.	Number of Products Covered by the RED[1]	Number of Product Chemistry Studies Required[2]	Number of Acute Toxicology Studies Required[3]	Number of Efficacy Studies Required
Aldicarb	0140	39	31	12 (2 batches)	0
Aliphatic Alcohols, C6-C16	4004	22	31	54 (5 batches/4 products not batched)	0
Aliphatic Esters	4005	1	31	6 (1 product not batched)	0
Alkyl Trimethylenediames	3014	13	34	Antimicrobial RED--Acute toxicity batching has not been completed	PDCI has not been completed
Allethrin Stereoisomers	0437	251	31	Acute toxicity batching has not been completed	0
4-Aminopyridine	0015	10	31	PDCI and Acute toxicity batching have not been completed	PDCI has not been completed
Antimycin-A	4121	1	31	6 (1 product not batched)	0
Benzoic Acid	4013	11	31	Acute toxicity batching has not been completed	0
Bioban-p-1487	3028	5	34	Antimicrobial RED -- Acute toxicity batching has not been completed	PDCI has not been completed
Bromonitrostyrene (Voluntary Cancellation)	2065	6	NA	NA	NA
Carbaryl[4]	0080	101	NA	NA	NA
Carbofuran[4]	0101	88	NA	NA	NA
Chlorflurenol	2095	5	31	30 (5 products not batched)	0
Chlormequat Chloride	3003	4	31	24 (4 products not batched)	0
Copper-8-Quinolate	4026	28	34	Antimicrobial RED--Acute toxicity batching has not been completed	PDCI has not been completed

TABLE 3.—DCIS TO SUPPORT PRODUCT REREGISTRATION FOR FY 2007 REDS—Continued

Case Name	Case No.	Number of Products Covered by the RED[1]	Number of Product Chemistry Studies Required[2]	Number of Acute Toxicology Studies Required[3]	Number of Efficacy Studies Required
2,4-DP-p (dichorprop-p)	0294	63	31	Acute toxicity batching has not been completed	0
Dikegulac Sodium	3061	2	31	12 (2 products not batched)	0
Flumetralin	4119	6	31	Acute toxicity batching has not been completed	PDCI has not been completed
Formetanate HCl[4]	0091	6	NA	NA	NA
Glutaraldehyde	2315	59	34	Antimicrobial RED--Acute toxicity batching has not been completed	PDCI has not been completed
Mecoprop-p (MCPP-p)	0377	314	31	Acute toxicity batching has not been completed	0
Mefluidide	2370	12	31	48 (2 batches/6 products not batched)	0
Naphthenate Salts	3099	49	34	Antimicrobial RED--Acute toxicity batching has not been completed	PDCI has not been completed
Octhilinone	2475	37	34	Antimicrobial RED--Acute toxicity batching has not been completed	PDCI has not been completed
Oxamyl[4]	0253	12	NA	NA	NA
Para-Dichlorbenzene	3058	28	31	Acute toxicity batching has not been completed	0
Polypropylene Glycol (Butoxypolypropylene Glycol)	3123	53	31	PDCI and Acute toxicity batching have not been completed	PDCI has not been completed
Rotenone	0255	50	31	Acute toxicity batching has not been completed	PDCI has not been completed
Trimethoxysilyl Quats	3148[5]	30	34	Antimicrobial RED--Acute toxicity batching has not been completed	PDCI has not been completed
Total No. of Products	---	1,306	---	---	---

[1] The number of registered products containing a pesticide active ingredient can change over time. The product total that appears in the RED document (counted when the RED is signed) may be different than the number of products that EPA is tracking for product reregistration (counted later, when the RED is issued). This table reflects the current number of products associated with each RED, as they are being tracked for product reregistration.

[2] This column shows the number of product chemistry studies that are required for each product covered by the RED.

[3] In an effort to reduce the time, resources, and number of animals needed to fulfill acute toxicity data requirements, EPA batches products that can be considered similar from an acute toxicity standpoint. For example, 1 batch could contain 5 products. In this instance, if 6 acute toxicology studies usually were required per product, only 6 studies (rather than 30 studies) would be required for the entire batch. Factors considered in the sorting process include each product's active and inert ingredients (e.g., identity, percent composition, and biological activity), type of formulation (e.g., emulsifiable concentrate, aerosol wettable powder, granular), and labeling (e.g., signal word, use classification, precautionary labeling). The Agency does not describe batched products as substantially similar, because all products within a batch may not be considered chemically similar or have identical use patterns. (Note: FIFRA section 24(c) or Special Local Need (SLN) registrations are not included in the acute toxicity batchings because they are supported by a valid parent product (section 3) registration.)

[4] These 4 chemicals were addressed in IREDs issued in previous fiscal years. At that time, PDCIs were approved and/or issued for Carbaryl, Formetanate HCl, and Oxamyl. A PDCI was not issued for Carbofuran because its products were declared ineligible for reregistration. These IREDs became REDs in September 2007 when the N-Methyl Carbamate cumulative risk assessment was completed. Additional PDCIs will not be issued for these REDs.

[5] Two additional active ingredients were significantly similar to Trimethoxysiyl Quats (Case 3148) and were included in the Trimethoxysiyl Quats case before the RED was completed.

D. Progress in Reducing the Number of Unreviewed, Required Reregistration Studies

Although EPA made progress during FY 2007 in reviewing scientific studies submitted by registrants in support of pesticides undergoing reregistration, the percent of studies reviewed remained constant (See Table 4). The Agency is considering options for categorizing reregistration studies more precisely.

TABLE 4.—REVIEW STATUS OF STUDIES SUBMITTED FOR PESTICIDE REREGISTRATION, END OF FY 2007

Pesticide Reregistration List, per FIFRA Section 4(c)(2)	Studies Reviewed + Extraneous[1]	Studies Awaiting Review	Total Studies Received
List A	11,283 + 603 = 11,886 (87%)	1,788 (13%)	13,674
List B	6,630 + 1,061 = 7,691 (81.5%)	1,748 (18.5%)	9,439
List C	2,098 + 334 = 2,432 (84%)	463 (16%)	2,895
List D	1,275 + 134 = 1,409 (86%)	228 (14%)	1,637
Total Lists A - D	21,286 + 2,132 = 23,418 (84.7%)	4,227 (15.3%)	27,645 (100%)

[1] Extraneous studies is a term used to classify those studies that are not needed because the guideline or data requirement has been satisfied by other studies or has changed.

E. Aggregate Status of Tolerances Reassessed

During FY 2007, EPA completed 84 tolerance reassessment decisions for the N-methyl carbamate pesticides. With these reassessments, the Agency addressed 100% of the 9,721 tolerances that required reassessment (See Table 5).

EPA's general schedule for tolerance reassessment (62 FR 42020, August 4, 1997) identified three groups of pesticides to be reviewed; this grouping reflected the Agency's overall scheduling priorities. In completing tolerance reassessment, EPA gave priority to pesticides in Group 1, the Agency's highest priority group for reassessment.

1. *Aggregate accomplishments through reregistration and other programs.* EPA accomplished tolerance reassessment through pesticide registration and reregistration; by revoking tolerances for pesticides that have been canceled (many as a result of reregistration); by reevaluating pesticides with REDs issued prior to August 1996; and through other decisions not directly related to registration or reregistration, described further below. EPA used the Tolerance Reassessment Tracking System (TORTS) to compile this updated information and report on the status of tolerance reassessment (See Table 5).

TABLE 5.—TOLERANCE REASSESSMENTS COMPLETED POST-FQPA BY FISCAL YEAR, THROUGH FY 2007[1]

Tolerances Reassessed Through...	Late FY 96	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	Total, End of FY 2007
Reregistration/REDs	25	339	277	359	44	46	231	79	84	413	1,037	84	3,018
Tolerance Reassessments/ TREDs	0	0	0	0	0	0	776	15	119	69	305	0	1,284
Registration	0	224	308	340	55	216	200	0	69	0	1	0	1,413
Tolerance revocations	3	0	812	513	22	35	545	0	174	112	185	0	2,401
Other decisions including inerts	0	1	0	233	0	0	905	26	21	128	291	0	1,605
Total tolerances reassessed	28	564	1,397	1,445	121	297	2,657	120	467	722	1,819	84	9,721

[1] Includes corrected counts for some previous years.

i. *Reregistration/REDs.* EPA used the reregistration program to accomplish much of tolerance reassessment. For each of the tolerance reassessment decisions made through REDs since August 1996, the Agency has made the finding as to whether there is a reasonable certainty of no harm, as required by FFDCA. Many tolerances reassessed through reregistration remained the same while others were raised, lowered, or revoked.

ii. *Tolerance reassessments/TREDs.* Tolerances initially evaluated through REDs that were completed before August 1996 were reassessed to ensure that they met the new FFDCA safety standard. EPA issued these post-RED tolerance reassessment decisions as TREDs. The Agency also issued TREDs summarizing tolerance reassessment decisions for some REDs under development, for new pesticide active ingredients not subject to reregistration,

and for pesticides with import tolerances only.

iii. *Registration*. Like older pesticides, all new pesticide registrations must meet the safety standard of FFDCA. Many of the registration applications EPA receives are for new uses of pesticides already registered for other uses. To reach a decision on a proposed new food use of an already registered pesticide, EPA must reassess the aggregate risk of the the existing tolerances, as well as the proposed new tolerances, to make sure there is reasonable certainty that no harm will result to the public from aggregate exposure from all uses.

iv. *Tolerance revocations*. When EPA has canceled use on a particular crop or commodity of all products containing a pesticide active ingredient, the Agency ordinarily will revoke the tolerance, unless a party provides data to support it as an import tolerance. Some pesticides were canceled due to the Agency's risk concerns. Others were canceled voluntarily by their manufacturers, based on economic decisions not to support reregistration. Tolerance revocations are important even if there are no domestic uses of a pesticide because residues in or on imported commodities treated with the chemical could still present dietary risks that may exceed the FFDCA ''reasonable certainty of no harm'' standard, either individually or cumulatively with other substances that share a common mechanism of toxicity.

v. *Other reassessment decisions*. In addition to the types of reassessment actions described above, a total of 1,605 additional tolerance reassessment decisions were made. Some were made for inert ingredient tolerance exemptions through actions not directly related to registration or reregistration.

2. *Accomplishments for priority pesticides*. During FY 2007, EPA completed the remaining 84 tolerance reassessment decisions for the high priority N-methyl carbamate pesticides. This completes the reassessment of priority pesticides.

F. Applications for Registration Requiring Expedited Processing; Numbers Approved and Disapproved

By law, EPA must expedite its processing of certain types of applications for pesticide product registration, i.e., applications for end-use products that would be identical or substantially similar to a currently registered product; amendments to current product registrations that do not require review of scientific data; and products for public health pesticide uses. During FY 2007, EPA considered and approved the numbers of applications for registration requiring expedited processing (also known as ''fast track'' applications) shown in Table 6.

TABLE 6.—FAST TRACK APPLICATIONS APPROVED IN FY 2007

Me-too product registrations/Fast track	394
Amendments/Fast track	3,441
Total applications processed by fast track means	3,835

For those applications not approved, the Agency generally notifies the registrant of any deficiencies in the application that need to be corrected or addressed before the application can be approved. Applications may have been withdrawn after discussions with the Agency, but none were formally ''disapproved'' during FY 2007.

On a financial accounting basis, EPA devoted 25.4 full-time equivalents (FTEs) in FY 2007 to reviewing and processing applications for fast track me-too product registrations and label amendments. The Agency spent approximately $3.15 million in FY 2007 in direct costs (i.e., time on task, not including administrative expenses, computer systems, management overhead, and other indirect costs) on expedited processing and reviews.

G. Future Schedule for Reregistrations

EPA plans to complete the remaining 27 REDs in FY 2008, meeting the October 3, 2008 PRIA deadline. The Agency's schedule for completing these decisions is as follows. This schedule also is available on EPA's website at *http://www.epa.gov/pesticides/reregistration/decision_schedule.htm.*

List 1.—FY 2008 REDs Schedule

Acrolein
Busan 77
Chloropicrin
Chromated arsenicals (CCA)
Coal tar/creosote
Dazomet
Diiodomethyl p-tolyl sulfone (Amical 48)
Ethylene oxide (ETO) (TRED completed in FY 2006)
Formaldehyde
Grotan
Inorganic thiosulfates (ammonium thiosulfate)
Methyl bromide (soil fumigant uses; commodity uses TRED & RED completed FY 2006)
Methyldithiocarbamate salts (metam sodium/metam potassium)
MITC (methyl isothiocyanate)
Naphthalene
Nicotine
Organic esters of phosphoric acid
Pentachlorophenol
Prometon
Siduron
Sodium fluoride
Sulfometuron methyl
Sumithrin
Tetramethrin
Tributyltin-containing compounds
Triclosan (Irgasan)
Triforine

H. Projected Year of Completion of Reregistrations

EPA expects to complete 27 remaining reregistration eligibility decisions in FY 2008. Product reregistration, which takes place only after the reregistration eligibility decisions have been completed for the active ingredients, will not likely be completed before 2014.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: August 22, 2008.

James B. Gulliford,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. E8–20236 Filed 9–2–08; 8:45 am]

BILLING CODE 6560–50–S

FARM CREDIT SYSTEM INSURANCE CORPORATION

Farm Credit System Insurance Corporation Board; Regular Meeting

SUMMARY: Notice is hereby given of the regular meeting of the Farm Credit System Insurance Corporation Board (Board).

Date and Time: The meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on September 11, 2008, from 10 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Roland E. Smith, Secretary to the Farm Credit System Insurance Corporation Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available) and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- June 12, 2008

B. Business Reports

- June 30, 2008 Financial Report
- Report on Insured and Other Obligations
- Quarterly Report on Annual Performance Plan

C. New Business

- Annual Performance Plan FY 2009–2010
- Proposed 2009 and 2010 Budgets
- Insurance Fund Progress Review and Setting of Premium Range Guidance for 2009

Closed Session

- Report on System Performance

Dated: August 27, 2008.

Roland E. Smith,

Secretary, Farm Credit System Insurance Corporation Board.

[FR Doc. E8–20380 Filed 9–2–08; 8:45 am]

BILLING CODE 6710–01–P

FEDERAL TRADE COMMISSION

Public Workshops and Roundtables: Emerging Health Care Competition and Consumer Issues

AGENCY: Federal Trade Commission

ACTION: Notice of Public Workshops and Roundtables and Opportunity for Comment

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') announces it will hold two workshops and roundtables in the fall of 2008 on emerging health care competition and consumer issues. They will focus on two distinct areas in which competition and consumer protection policies are implicated: (1) competition provided by developing an abbreviated regulatory approval pathway for follow-on biologic drugs; and (2) competition among health care providers based on quality information. The workshops and roundtables will be held at and administered by the FTC and their dates will be announced in a separate public notice.

This notice poses a series of questions for which the FTC seeks public comment. The Commission will consider these comments as it prepares for the public workshops and roundtables. In the spring of 2009, the FTC will release a report that analyzes the potential impacts on the marketplace of various policy options in these two areas.

DATES: Specific dates for the workshops and roundtables will be announced shortly, along with an agenda. Comments on the questions contained in this Notice must be received on or before September 30, 2008. In addition, any interested person may submit written comments to any of the topics addressed during the workshops. Comments directed at a particular subject considered in a workshop or roundtable must be received no later than 30 days after the date of that workshop or roundtable.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to ''Emerging Health Care Competition and Consumer Issues—Comment, Project No. P083901'' to facilitate the organization of the comments. Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c).[1] Comments should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records and other individually identifiable health information.

Because paper mail in the Washington area, and specifically to the FTC, is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*http://secure.commentworks.com/ftc-healthcarecompetition*) and following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov,* you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it.

A comment filed in paper form should include the ''Emerging Health Care Competition and Consumer Issues—Comment, Project No. P083901'' reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex F), 600 Pennsylvania Avenue, NW, Washington, DC 20580.

The Federal Trade Commission Act (''FTC Act'') and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.htm.*) As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *www.ftc.gov/ftc/privacy.shtmwww.ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Wroblewski, Bureau of Competition, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580; telephone (202) 326-2435; e-mail: *mwroblewski@ftc.gov.* Detailed agendas for the workshop will be available on the FTC Home Page (*http://www.ftc.gov*).

SUPPLEMENTARY INFORMATION: Issues arising from the application of competition and consumer protection law to health care have tremendous significance for the U.S. economy and consumer/patient welfare. The 2004 Federal Trade Commission and Department of Justice Report, ''Improving Health Care: A Dose of Competition'' described the economic significance of health care to U.S. productivity. It has become even more so in the intervening four years. The Commission has an important role to play in health care markets through its missions of maintaining competition and protecting consumers.

The Commission intends to focus on two emerging areas that implicate both its competition and consumer protection mission: (1) competition provided by developing an abbreviated regulatory approval pathway for follow-on biologic drugs;[2] and (2) competition

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

[2] Follow-on biologic drugs refer to those drugs that are sufficiently similar to an approved or

Continued

among health care providers based on quality information. Through these workshops and roundtables the Commission intends to analyze the potential impacts on the marketplace of various policy options in these two areas.[3]

I. Competition Issues Involving Follow-on Biologic Drugs

A. Regulatory Exclusivities and Follow-on Biologic Drug Competition

One of the central questions in establishing an abbreviated regulatory approval pathway for follow-on biologic products involves how to strike the right balance between regulatory exclusivity periods and competition to spur the development of new, improved, and follow-on biologic drug products. The present regulatory scheme governing approval of non-biologic (or small molecule) generic pharmaceutical drug products offers innovator companies incentives through regulatory exclusivities that provide some degree of protection from new competition in the marketplace, separate and apart from whatever patent protection may exist. In addition, first generic drug applicants are eligible for a 180-day exclusivity period during which other generic drug applicants are precluded from receiving FDA approval to enter the market. The question arises whether, or to what the extent, these regulatory incentives should be adopted in creating a pathway for the approval of follow-on biologic drug products. The FTC invites comments on the following questions.

1. What is the likely competitive effect of the market entry of a follow-on biologic competitor? Are there empirical models that predict the nature of this competition based on existing biologic drug product competition? How has competition developed between referenced and follow-on products in European markets? Would referenced product manufacturers lower their prices, offer discounts, and/or engage in enhanced marketing activities?

2. What is the likely impact of a follow-on biologic product being designated ''interchangeable'' (*i.e.*, receiving an approval that would permit pharmacists, without physician authorization, to fill a prescription for the referenced product with the follow-on product)? What are the prospects for the use of ''authorized follow-on biologics'' in these circumstances? Do the answers to these questions differ based on the type of biologic product involved?

3. What competitive concerns are raised by joint research and development, supply, licensing, marketing, and distribution agreements between referenced biologic manufacturers and their follow-on biologic competitors? What would be the likely impact of a requirement that agreements between referenced drug product manufacturers and follow-on biologic applicants be filed with the FTC and the Department of Justice Antitrust Division?

4. How would the prospect of competition from follow-on biologic drugs influence research and development for new biologic drugs, improvements to existing biologic drugs, and the timing and rollout of new and/or improved biologic drugs? Does the market experience with non-biologic generic pharmaceutical drug products provide insights into these issues?

5. How does the method used by Medicare for reimbursement of biologic drug products affect pricing and competition of referenced biologic products? What factors are important for this effect and why? How would the Medicare reimbursement system likely affect prices for both the referenced and follow-on biologic products? For example, does Medicare reimburse Part B drugs, including biological drugs, based on the Average Sales Price of all the biological drugs whose National Drug Codes (NDCs) reference the same Biologic License Application (BLA)? If so, how would a follow-on biologic drug that does not reference the BLA of the referenced drug affect the Medicare reimbursed price for referenced drug product? How will these and other Medicare reimbursement methodologies likely affect models of price competition after follow-on biologic drug entry?

6. How are the patent portfolios claiming biologic drugs similar or dissimilar to the patent portfolios that claim small molecule (nonbiologic) drugs approved under the federal Food, Drug, and Cosmetic Act (FDCA)?

7. Are the regulatory exclusivities currently provided to pharmaceutical drug products in the FDCA appropriate for new biologic drugs and/or significant improvements to existing biologic products? Are they appropriate for specific types of biologics? Why or why not?

8. What are the appropriate factors to consider when determining the optimal length of regulatory exclusivity periods for biologic drug products? Do these factors change based on the type of referenced product involved, the extent of competition facing the referenced product, or patent portfolios claiming the referenced product, and if so, how?

9. How does the European Medicines Agency's approach to regulatory exclusivities in its abbreviated regulatory approval pathway for follow-on biologics inform the U.S. approach?

10. Is a marketing exclusivity period necessary to encourage companies to develop follow-on biologics and to seek their approval by the FDA? If so, why, and how should such an exclusivity period be structured?

B. Patent Dispute Resolution Issues

One of the features of the Hatch-Waxman Amendments to the FDCA is a regulatory structure that encourages the initiation of patent litigation early in the FDA approval process for a generic drug application that challenges a patent claiming the innovator's drug product (a Paragraph IV application). Since 1998, the FDA has faced many fact situations that have required the agency to interpret this aspect of the Hatch-Waxman regulatory scheme. Many of these interpretations have been challenged by industry participants, resulting in substantial court review of the FDA's decisions. Moreover, the FTC has taken numerous enforcement actions against brand and generic drug manufacturers that have allegedly abused this regulatory structure.[4] In light of these experiences, the FTC invites comments on the following questions and topics.

1. Would it be important to have the litigation of any patent disputes proceed concurrently with the abbreviated FDA approval process for follow-on biologics? Why or why not? What has been learned from the experience under Hatch-Waxman about the incentives necessary to encourage early resolution of patent issues?

2. How long might the approval process for a follow-on biologic application take? What factors might influence this timing?

3. How might differences between patent portfolios for small molecule drugs and biologics affect patent litigation involving follow-on biologics? How long might patent litigation involving a follow-on biologic product take?

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referenced biologic product to permit the follow-on applicant to rely on existing scientific knowledge about the safety and effectiveness of the referenced biologic product to obtain approval of the follow-on product. A follow-on biologic drug is not necessarily interchangeable or substitutable at the pharmacy level with the referenced drug product.

[3] On May 2, 2008, the FTC responded to questions from the Subcommittee on Health of the Committee on Energy and Commerce relating to the creation of a pathway for FDA approval of follow-on biologic products. *See* (*http://energycommerce.house.gov/Press_110/110-ltr.050208.respto040308.FTC.pdf.*)

[4] *See* FTC, Overview of FTC Antitrust Action in Pharmaceutical Services and Products (March 2008), *available at http://www.ftc.gov/bc/0608rxupdate.pdf.*

4. When is it in the interest of a referenced biologic drug manufacturer to resolve patent issues prior to marketing by a follow-on applicant? When is it in the interest of a follow-on biologic applicant to resolve patent issues prior to marketing its follow-on biologic? When is it in the interest of either party to resolve patent issues following commercial marketing of the follow-on product?

5. What are the legal impediments facing a follow-on biologic applicant that has not been sued for infringement to obtaining a declaratory judgment on patent infringement or invalidity issues prior to commercial marketing of its follow-on product?

6. Are regulatory exclusivities needed to encourage follow-on biologic applicants to challenge patents? Why or why not?

7. What opportunities will biologic drug manufacturers and follow-on applicants have to manipulate proposed new regulatory obligations (*e.g.*, application notification obligations, declarations of patents claiming biologic drugs, etc.) and exclusivity periods surrounding a concurrent patent resolution process? What are the prospects for the improper use of citizen petitions to delay approval of follow-on biologic applications?

8. How might referenced biologic product manufacturers and follow-on biologic applicants structure patent settlement agreements given the competitive dynamics arising from the marketing of follow-on biologic drugs? What incentives might exist for these companies to enter anticompetitive settlements? Should patent settlement agreements be filed with the antitrust agencies? What would be the likely effect of the filing requirement on settlements?

II. Competitive Significance of Health Care Quality Information

Competition in health care markets is enhanced when purchasers have information to help evaluate the cost and quality of the services purchased. The 2004 Health Care Report found, however, that information regarding health care prices and quality is often difficult to measure and obtain and is not necessarily reliable. A 2008 FTC Workshop on Innovations in Health Care Delivery considered ongoing issues about health care price and quality transparency. Panelists at the 2008 Workshop discussed the potential importance to consumers of relevant price information, including out-of-pocket price information. Also discussed were forms of transparency that may be anticompetitive. For instance, public disclosure of confidential contract rates between providers and payers could be anticompetitive because it could foster coordinated pricing. The FTC seeks to build on its 2008 Workshop to explore further the competitive significance of qualitative health care information from the purchasers' viewpoint (*i.e.*, the demand side). The FTC will explore whether or how quality information can be used to help purchaser decision making. The FTC will examine the extent to which there is demand is for high quality health care, the attributes of quality information that motivate purchasers to select high quality providers, and the ramifications of quality-based competition on the availability of health care. Along these lines, the FTC will explore whether providers delivering high quality services are rewarded with more business (and/or greater revenue) and whether those failing to do so either improve or are penalized with less business (and/or lower revenue). In this context, purchasers include consumers, employers, insurers, hospitals, doctors, and others who can use quality information in their decision making. The FTC also will examine the costs and benefits of different federal policies that could be used to facilitate the measurement, collection, and reporting of health care provider quality information to these various purchasers.

The FTC invites comments on the following issues and topics set out below. The FTC encourages comments that analyze the results of recent experiments, demonstration projects, and initiatives designed to report health care quality measures to various types of purchasers.

A. Purchaser Decision Making and Quality Information

1. What decisions do quality information help different types of purchasers make?

2. What are the relevant times at which purchasers make health care decisions? What quality information about health care services and providers should be presented at these critical junctures?

3. What quality information is the most competitively significant for different types of purchasers? Are different types of data (*e.g.*, licensing information, compliance with process measures, customer satisfaction, outcomes, outcomes per dollar spent) appropriate for different purchasers and purchaser decisions? How should any differences in measurement of the same provider or service (over the same time frame) be reconciled?

4. Does health care quality vary based by medical condition, provider, and patient? Does it vary over time? If so, how should quality measures be adjusted to take these differences into account?

5. What information is needed to measure the efficiency of a provider? What is the proper weighting of quality and resource use in an efficiency measure?

6. How broad a range of differences among health care providers and services is needed to motivate purchasers to switch service providers?

7. How should regional variations be accounted for in showing the results of quality measures? Should local, state, regional, or national benchmarks be used to show differences among service providers? Why or why not?

8. How does the framing of quality information affect the purchasers' decisions? Do symbols and summaries affect purchaser understanding of health care quality information?

9. What has been learned from public and private quality reporting initiatives that can aid the competitive process?

10. What are the tradeoffs between quality-based competition and the availability of health care?

B. Barriers To Developing and Implementing Quality Measures

1. What barriers—clinical, marketplace, regulatory, or other—restrict the measurement, collection, and reporting of health care quality information? Can health care quality be measured such that it is of value to purchasers in their decision making?

2. Do providers and insurers have business reasons to develop and implement public reporting of quality measures?

3. How should quality measurements deal with organizational variation on the supply side (*e.g.*, solo physician practitioners, small physician groups, integrated physician groups, etc.). If so, how should the measures be adjusted to consider this variation?

4. How does the development of reimbursement and payment reform affect the development of quality measurements?

5. Several private and public entities have developed standards to measure health care quality. Are concerns about provider capture of these organizations relevant in this context?

C. Federal Policies To Facilitate Quality Information Collection and Reporting

1. What federal policies can help overcome any marketplace barriers to the measurement, collection, and reporting of quality information?

2. How can government use its role as a payer (*e.g.*, Medicare, Medicaid) to facilitate the development and use of quality information more broadly?

3. What are the costs and benefits of a single entity developing the quality measures, collecting and analyzing the data, and reporting the results? What are the costs and benefits of governmental involvement in these activities?

4. How should federal, state, and private sector efforts to measure and report on health care quality be harmonized so that purchasers obtain the benefits of cost and quality information?

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E8–20399 Filed 9–2–08: 8:45 am]

BILLING CODE 6750–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Electronic Health Records Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the 25th meeting of the American Health Information Community Electronic Health Records Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.)

DATES: September 10, 2008, from 1 p.m. to 4 p.m. [Eastern]

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 1114. Please use the C Street entrance closest to 3rd Street and bring photo ID for entry to a Federal building.

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/healthrecords/.*

SUPPLEMENTARY INFORMATION: The Workgroup will continue its discussion on ways to achieve widespread adoption of certified EHRs, minimizing gaps in adoption among providers.

The meeting will be available via Web cast. For additional information, go to: *http://www.hhs.gov/healthit/ahic/healthrecords/ehr_instruct.html.*

Dated: August 13, 2008.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. E8–20328 Filed 9–2–08; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Quality Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the 20th meeting of the American Health Information Community Quality Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.)

DATES: September 5, 2008, from 2 p.m. to 4 p.m. [Eastern]

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 1114. Please use the C Street entrance closest to 3rd Street and bring photo ID for entry to a Federal building.

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/quality/.*

SUPPLEMENTARY INFORMATION: The Workgroup will continue its discussion on how health information technology can provide the data needed for the development of quality measures that are useful to patients and others in the health care industry, automate the measurement and reporting of a comprehensive current and future set of quality measures, and accelerate the use of clinical decision support that can improve performance on those quality measures.

The meeting will be available via Web cast. For additional information, go to: *http://www.hhs.gov/healthit/ahic/quality/quality_instruct.html.*

Dated: August 16, 2008.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. E8–20330 Filed 9–2–08; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Chronic Care Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the 26th meeting of the American Health Information Community Chronic Care Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.)

DATES: September 8, 2008, from 1 p.m. to 4 p.m., Eastern Time.

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 1114. Please use the C Street entrance closest to 3rd Street and bring photo ID for entry to a Federal building.

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/chroniccare/.*

SUPPLEMENTARY INFORMATION: The Workgroup will discuss progress made to date and future steps regarding secure messaging and remote care as it relates to the transition to the new AHIC.

The meeting will be available via Web cast. For additional information, go to: *http://www.hhs.gov/healthit/ahic/chroniccare/cc_instruct.html.*

Dated: August 11, 2008.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. E8–20331 Filed 9–2–08; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Confidentiality, Privacy, & Security Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the 22nd meeting of the American Health Information Community Confidentiality, Privacy, & Security Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.)

DATES: September 11, 2008, from 1 p.m. to 5 p.m. [Eastern Time].

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 1114. Please use the C Street entrance closest to 3rd Street and bring photo ID for entry to a Federal building.

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/confidentiality/.*

SUPPLEMENTARY INFORMATION: The Workgroup Members will continue discussing and evaluating the confidentiality, privacy, and security protections and requirements for participants in electronic health information exchange environments.

The meeting will be available via Web cast. For additional information, go to: *http://www.hhs.gov/healthit/ahic/cps_instruct.html.*

Dated: August 5, 2008.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. E8–20332 Filed 9–2–08; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Consumer Empowerment Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the 29th meeting of the American Health Information Community Consumer Empowerment Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.).

DATES: September 16, 2008, from 1 p.m. to 4 p.m. [Eastern].

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 1114. Please use the C Street entrance closest to 3rd Street and bring photo ID for entry to a Federal building.

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/consumer/.*

SUPPLEMENTARY INFORMATION: The Workgroup will continue its discussion on how to encourage the widespread adoption of a personal health record that is easy-to-use, portable, longitudinal, affordable, and consumer-centered.

The meeting will be available via Web cast. For additional information, go to: *http://www.hhs.gov/healthit/ahic/consumer/ce_instruct.html.*

Dated: August 5, 2008.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. E8–20333 Filed 9–2–08; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Population Health and Clinical Care Connections Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the 30th meeting of the American Health Information Community Population Health and Clinical Care Connections Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.)

DATES: September 17, 2008, from 2 p.m. to 5 p.m. [Eastern Time].

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 1114. Please use the C Street entrance closest to 3rd Street and bring photo ID for entry to a Federal building.

FOR FURTHER INFORMATION: *http://www.hhs.gov/healthit/ahic/population/.*

SUPPLEMENTARY INFORMATION: The Workgroup will continue its discussion on how to facilitate the flow of reliable health information among population health and clinical care systems necessary to protect and improve the public's health. The meeting will be available via Web cast. For additional information, go to: *http://www.hhs.gov/healthit/ahic/population/pop_instruct.html.*

Dated: August 5, 2008.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. E8–20334 Filed 9–2–08; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP) Center for the Evaluation of Risks to Human Reproduction (CERHR) Announces the Availability of the NTP–CERHR Monograph on Bisphenol A

AGENCY: National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH).

ACTION: Availability of the NTP–CERHR Monograph on Bisphenol A.

SUMMARY: In December 2005, the CERHR announced its intention to conduct an evaluation of the potential for bisphenol A to cause adverse effects on reproduction and development in humans (**Federal Register**: December 21, 2005: Vol. 70, No. 244, page 75827). The final results of this evaluation are now available in the NTP–CERHR Monograph on Bisphenol A that includes the (1) NTP Brief on Bisphenol A and (2) CERHR Expert Panel Report on the Reproductive and Developmental Toxicity of Bisphenol A. The NTP Brief provides the public, as well as government health, regulatory, and research agencies, with the NTP's conclusions regarding the potential for bisphenol A to adversely affect human reproductive health or children's development. The NTP Brief is based on information about bisphenol A provided in the expert panel report, public comments, comments from peer reviewers of the draft NTP Brief, and additional scientific information available since the expert panel meeting.

DATES: The NTP–CERHR Monograph on Bisphenol A will be available on September 3, 2008.

ADDRESSES: The NTP–CERHR Monograph on the Potential Human Reproductive and Developmental Effects of Bisphenol A is now available electronically on the CERHR Web site (*http://cerhr.niehs.nih.gov* see ''Now Available'') or on CD or in printed text from the CERHR by contacting Dr. Michael D. Shelby, CERHR Director, NIEHS, P.O. Box 12233, MC EC–32, Research Triangle Park, NC 27709 (mail), 919–316–4511 (fax), or *shelby@niehs.nih.gov* (e-mail). Courier address: CERHR, 79 T.W. Alexander Drive, Building 4401, Room 103, Research Triangle Park, NC 27709. Additional information related to the evaluation of bisphenol A, including the peer review report for the NTP Brief and all public comments received during the course of the evaluation, are available on the CERHR Web site (see Bisphenol

A under ''CERHR Reports & Monographs'' or directly at *http://cerhr.niehs.nih.gov/chemicals/bisphenol/bisphenol-eval.html.*)

SUPPLEMENTARY INFORMATION:

Background Information on Bisphenol A

Bisphenol A (CAS RN: 80–05–7) is a high production volume chemical used primarily in the production of polycarbonate plastics and epoxy resins. Polycarbonate plastics are used in some food and drink containers; the resins are used as lacquers to coat metal products such as food cans, bottle tops, and water supply pipes. To a lesser extent bisphenol A is used in the production of polyester resins, polysulfone resins, polyacrylate resins, and flame retardants. In addition, bisphenol A is used in the processing of polyvinyl chloride plastic. Some polymers used in dental sealants and composites may contribute to bisphenol A exposures. The primary source of exposure to bisphenol A for most people is assumed to occur through the diet. The highest estimated daily intakes of bisphenol A in the general population occur in infants and children. CERHR selected bisphenol A for evaluation because of (1) widespread human exposure, (2) public concern for possible health effects, (3) high production volume, and (4) evidence of reproductive and developmental toxicity in laboratory animal studies.

Background Information on the CERHR

The NTP established CERHR in 1998 (**Federal Register**: December 14, 1998: Vol. 63, No. 239, page 68782). CERHR is a publicly accessible resource for information about adverse reproductive and/or developmental health effects associated with exposure to environmental and/or occupational exposures. CERHR follows a formal process for the evaluation of selected chemicals that includes opportunities for public input.

CERHR invites the nomination of agents for review or scientists for its expert registry. Information about CERHR and the nomination process can be obtained from its homepage (*http://cerhr.niehs.nih.gov*) or by contacting Dr. Michael Shelby, CERHR Director (see **ADDRESSES**). CERHR selects chemicals for evaluation based upon several factors including production volume, potential for human exposure from use and occurrence in the environment, extent of public concern, and extent of data from reproductive and developmental toxicity studies. Expert panels conduct scientific evaluations of agents selected by CERHR in public forums. Following these evaluations, CERHR prepares the NTP–CERHR monograph on the agent evaluated. The monograph is transmitted to appropriate federal and state agencies and made available to the public.

Dated: August 20, 2008.

Samuel H. Wilson,

Acting Director, National Institute of Environmental Health Sciences and National Toxicology Program.

[FR Doc. E8–20297 Filed 9–2–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''Study of Factors Influencing Consumer Choices Among Health Plans and Clinicians.'' In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by November 3, 2008.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *doris.lefkowitz@ahrq.hhs.gov*.

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

''Study of Factors Influencing Consumer Choices Among Health Plans and Clinicians''

This study will use an experimental design to determine factors that influence consumer understanding and use of performance information to select among health plans and clinicians. Performance reports on health plans and individual providers have become increasingly available in recent years, but there is little evidence regarding how consumers understand and use different types of performance information to make choices.

The study will include two parallel experiments, one designed to assess factors influencing choice of health plans and one designed to assess factors influencing choice of individual doctors. Both experiments will present a panel of online consumers with a simulated Web-based performance report. Study subjects will answer a series of pre-test questions, and then be directed to a Web site with a simulated report (for either health plans or doctors) where they will view various types of performance information, go through the process of selecting either a health plan or a doctor, and then complete the experiment by answering a series of post-test questions about how they made their selection.

The categories of performance information to be included in the Web reports will be derived from patient experience survey results using Consumer Assessment of Healthcare Providers and Systems (CAHPS) composite measures, clinical process measures, personal anecdotes based on patient or enrollee experiences, and the frequency of different types of enrollee complaints or grievances (in the plan experiment only).

The results of this study will be used to develop recommendations for helping consumers to better understand and more effectively use complex information to select health plans and providers, with the aim of making performance information less burdensome and more accessible, useful, and transparent to the public. The simulated Web-based reports will be made available as examples for other report developers to use. This study is being conducted pursuant to AHRQ's statutory mandate to promote health care quality improvement by conducting and supporting research that develops and presents scientific evidence regarding all aspects of health care, 42 U.S.C. 299(b)(1), and to conduct research on health care and on systems for the delivery of such health care, 42 U.S.C. 299a.

Method of Collection

Participants in this study will be recruited through the Knowledge Networks national online panel of consumers. For both the health plan and clinician choice experiments, study subjects will be randomly assigned to one of several arms (described below)

that vary according to the type and complexity of performance information and the size of the choice set (number of plans or doctors) included in the Web report. Participants will complete the experiment through a secure online connection from their homes.

Clinician Choice Experimental Design

In each of the six arms, study participants will see a web page labeled ''Performance Overview'' that presents performance information for a set of primary care doctors in a way that allows them to compare doctor ratings. Performance is summarized by assigning one to five stars to show how each doctor compares with others in the same zip code area. Participants can click on hyperlinks or a tab to see more detailed results. The experimental arms differ in the type and amount of performance information presented and the number of doctors listed, as described below:

(1) *Baseline/Control Arm:* participants see only ''Patient Survey Results'' for each of 12 doctors in this arm. This includes a summary measure on the Performance Overview page and more detailed measures corresponding to CAHPS composites and an overall doctor rating on the drill-down page.

(2) *Experimental Arm #1:* Augmented Quantified Performance Measures: In this arm participants will also see ''Patient Survey Results'' on 12 doctors. In addition, they will see a summary clinical performance measure labeled ''Medical Quality Scores.'' The drill-down page shows that this is based on clinical indicators for prevention and screening, care for asthma, care for diabetes, and care for heart disease.

(3) *Experimental Arm #2:* CAHPS plus Anecdotes: In this arm, participants will again be presented with ''Patient Survey Results'' on 12 doctors. In addition, for each doctor, they will see a tab labeled ''Patient Comments.'' By clicking on this tab, they can see from four to six patient comments describing patients' experiences with each doctor. Participants in this arm will not see clinical performance scores.

(4) *Experimental Arm #3:* Augmented Quantified Performance Measures Plus Anecdotes: In this arm participants will be presented with all three types of information on 12 doctors: ''Patient Survey Results,'' ''Medical Quality Scores'', and ''Patient Comments.''

(5) *Experimental Arm #4:* CAHPS plus Anecdotes and Larger Choice Set: In this arm participants will be presented with ''Patient Survey Results'' and ''Patient Comments'' on 24 doctors.

(6) *Experimental Arm #5:* Maximum Cognitive Load: Large Choice Set and Three Measures of Performance: In this arm, participants are presented with all three types of information on 24 doctors: ''Patient Survey Results,'' ''Medical Quality Scores,'' and ''Patient Comments.''

The goals of the experiment are to assess the process of consumer choice and the extent to which CAHPS-type measures are consulted, and to examine how consumers respond to different types of information about doctor quality, including quantitative patient experience measures, anecdotal reports from individual patients, and clinical performance indicators. The post-test questionnaire will elicit participants' understanding and impressions of the material they saw on the Web site and inquire about how they made their choice. Therefore, the post-test questions will differ somewhat across experimental arms.

Health Plan Choice Experimental Design

The design of the health plan choice experiment has a comparable architecture to the clinician-choice experiment, but makes choices more challenging by adding more dimensions of performance measures within a smaller choice set. (These distinctions between informed clinician choice and informed plan choice replicate the information currently available to consumers over the internet.) In each of the six arms, study participants will see a web page labeled ''Performance Overview'' that presents performance information for a set of health plans in a way that allows them to compare plan ratings. Performance is summarized by assigning one to five stars to show how each plan compares with others in the same community. Participants can click on hyperlinks or a tab to see more detailed results. The experimental arms differ in the type and amount of performance information presented and the number of plans listed, as described below:

(1) *Baseline/Control Arm:* participants see only ''Patient Survey Results'' for each of 4 plans in this arm. This includes a summary measure on the Performance Overview page and more detailed measures corresponding to CAHPS composites and an overall plan ratings on the drill-down page.

(2) *Experimental Arm #1:* Augmented Quantified Performance Measures: In this arm participants will also see ''Patient Survey Results'' on four plans. In addition, they will see two summary clinical performance measures labeled ''Health Care Quality Scores,'' which will consist of selected Health Care Effectiveness Data and Information Set (HEDIS) measures, one for preventive care, and one for the treatment of chronic conditions. The drill-down page for prevention will show preventive care scores of regular physical exams, and screening for three common medical conditions. The drill down page for treatment will include summary measures for heart problems, asthma, diabetes, and arthritis. A summary score for the reported rate of consumer complaints will also be included, with a drill down reporting rating for the four most common causes of complaints, with the categories based on actual data from three states.

(3) *Experimental Arm #2:* CAHPS plus Anecdotes: In this arm, participants will again be presented with ''Patient Survey Results'' on four plans. In addition, for each plan, they will see a tab labeled ''Patient Comments.'' By clicking on this tab, they can see from four to six patient comments describing patients' experiences with each plan. Participants in this arm will not see quality performance or rates of patient complaints scores.

(4) *Experimental Arm #3:* Augmented Quantified Performance Measures Plus Anecdotes: In this arm participants will be presented with all four types of information for four plans: ''Patient Survey Results,'' ''Health Care Quality Scores'', ''Patient Complaint Rates'' and ''Patient Comments.''

(5) *Experimental Arm #4:* CAHPS plus Anecdotes and Larger Choice Set: In this arm participants will be presented with ''Patient Survey Results'' and ''Patient Comments'' on 12 plans.

(6) *Experimental Arm #5:* Maximum Cognitive Load: Large Choice Set and Five Measures of Performance: In this arm, participants are presented with all three types of information: ''Patient Survey Results,'' ''Health Care Quality Scores'' (both prevention and treatment), ''Patient Complaint Rates'' and ''Patient Comments'' on 12 plans.

The goal of these experiments is to assess the process of consumer choice and the extent to which CAHPS-type measures are consulted, and to examine how consumers respond to different types of information about plan performance, including quantitative patient experience measures, anecdotal reports from individual patients, frequency of consumer complaints, and clinical performance indicators. The post-test questionnaire will elicit participants' understanding and impressions of the material they saw on the Web site and inquire about how they made their choice. Therefore, the post-test questions will differ somewhat across experimental arms.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate in this experiment. This experiment will not exceed one year. All participants will complete the pre-test which is estimated to require 5 minutes. As explained above, the experimental Web site varies by experimental arm, however, each participant is expected to require about 10 minutes to review the information on the site. The baseline/control post-test will be completed by 170 participants and will require about 7 minutes to complete. Both the experimental arm #1 and #2 post-test will be completed by 166 participants each and will take about 8 minutes. Both the experimental arm #3 and #4 post-test will be completed by 166 participants each and will require about 12 minutes to complete. The experimental arm #6 post-test will be completed by 166 participants and will require about 14 minutes to complete. The total burden hours are estimated to be 838 hours.

Exhibit 2 shows the respondents' cost burden for their time to participate in this experiment. The total cost burden is estimated to be $16,142.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Experimental group	Number of responses	Number of responses per respondent	Hours per response	Total burden hours
Clinician Choice Experiment:				
Pretest	1,000	1	5/60	83
Experimental Web site	1,000	1	10/60	167
Baseline/Control Post-test	170	1	7/60	20
Experimental Arm #1 Post-test	166	1	8/60	22
Experimental Arm #2 Post-test	166	1	8/60	22
Experimental Arm #3 Post-test	166	1	12/60	33
Experimental Arm #4 Post-test	166	1	12/60	33
Experimental Arm #5 Post-test	166	1	14/60	39
Health Plan Choice Experiment:				
Pretest	1,000	1	5/60	83
Experimental Web site	1,000	1	10/60	167
Baseline/Control Post-test	170	1	7/60	20
Experimental Arm #1 Post-test	166	1	8/60	22
Experimental Arm #2 Post-test	166	1	8/60	22
Experimental Arm #3 Post-test	166	1	12/60	33
Experimental Arm #4 Post-test	166	1	12/60	33
Experimental Arm #5 Post-test	166	1	14/60	39
Total	6,000	na	na	838

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Experimental group	Number of responses	Total burden hours	Average hourly wage rate*	Total cost burden
Clinician Choice Experiment:				
Pretest	1,000	83	$19.26	$1,599
Experimental Web site	1,000	167	19.26	3,216
Baseline/Control Post-test	170	20	19.26	385
Experimental Arm #1 Post-test	166	22	19.26	424
Experimental Arm #2 Post-test	166	22	19.26	424
Experimental Arm #3 Post-test	166	33	19.26	636
Experimental Arm #4 Post-test	166	33	19.26	636
Experimental Arm #5 Post-test	166	39	19.26	751
Health Plan Choice Experiment:				
Pretest	1,000	83	19.26	1,599
Experimental Web site	1,000	167	19.26	3,216
Baseline/Control Post-test	170	20	19.26	385
Experimental Arm #1 Post-test	166	22	19.26	424
Experimental Arm #2 Post-test	166	22	19.26	424
Experimental Arm #3 Post-test	166	33	19.26	636
Experimental Arm #4 Post-test	166	33	19.26	636
Experimental Arm #5 Post-test	166	39	19.26	751
Total	6,000	838	na	16,142

*Based upon the mean of the average wages, National Compensation Survey: Occupational wages in the United States 2006, "U.S. Department of Labor, Bureau of Labor Statistics."

Estimated Annual Costs to the Federal Government

The total cost to the Federal Government for developing and conducting both the health plan and clinician choice components of this study is $844,000, including the cost of designing the experiments, developing the simulated Web-based reports, conducting usability testing of the Web-reports, pilot testing the experiment, collecting the data, analyzing the data, preparing reports and papers for journal submission, and the cost for AHRQ staff

to oversee the project; see Exhibit 3. The annualized cost for this two year project is $422,000.

EXHIBIT 3—PROJECT COST COMPONENTS

Cost components	Cost estimate
Experimental design	$168,900
Development of simulated Web-based reports	157,900
Pilot testing	56,000
Usability testing of Web-based reports	56,300
Data collection via Knowledge Networks	126,000
Data analysis	56,300
Preparation of reports and journal papers	112,600
AHRQ project management	110,000
Total	844,000

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: August 26, 2008.

Carolyn M. Clancy,

Director.

[FR Doc. E8–20315 Filed 9–2–08; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Health and Nutrition Examination Survey (NHANES) Stored Biologic Specimens: Guidelines for Proposals To Use Samples and Proposed Cost Schedule

AGENCY: Centers for Disease Control and Prevention, Department of Health and Human Services.

ACTION: Notice and request for comments.

SUMMARY: The National Health and Nutrition Examination Survey (NHANES) is a program of periodic surveys conducted by the National Center for Health Statistics (NCHS) of the Centers for Disease Control and Prevention (CDC). Examination surveys conducted since 1960 by NCHS, have provided national estimates of health and nutritional status of the United States civilian non-institutionalized population. To add to the large amount of information collected for the purpose of describing the health of the population in the most recent survey, serum, urine and limited plasma samples were collected and stored for future research projects. Specimens are currently available from NHANES III (conducted from 1988–1994) and from NHANES 1999+. In 1999, NHANES became a continuous survey with data release every two years. Specimens are available from two year survey cycles after the demographic file has been released to the public. Participants in the survey that began in 1999 signed a separate consent document agreeing to specimen storage allowing their biologic specimens to be used for approved research projects.

Specimens are stored in two Specimen Banks. Surplus samples that were initially used for laboratory assays included in the surveys, have since been stored at −70° C and have been through at least two freeze-thaw cycles. They are stored at a commercial repository under contract to NCHS. In addition, on average, six vials of sera were also stored in vapor-phase liquid nitrogen at the CDC and ATSTR Specimen Packaging, Inventory and Repository (CASPIR) Repository in Lawrenceville, GA. These specimens have not undergone a freeze-thaw cycle. The CASPIR Repository is considered a long-term repository for the NHANES specimens. NCHS is making both of these collections available for research proposals. The research proposals that can use the surplused specimens will receive higher priority. Proposals that request the specimens in CASPIR need to justify the use of the unthawed specimens.

The purpose of this notice is to request comments on this program and the proposed cost schedule. After consideration of comments submitted, CDC will finalize and publish the cost schedule and accept proposals for use of the NHANES stored biologic samples. Please go to *http://www.cdc.gov/nchs/about/major/nhanes/serum1b.htm* for final proposal guidelines.

All interested researchers are encouraged to submit proposals. No funding is provided as part of this solicitation. Samples will not be provided to those projects requiring funding until the project has received funds. Approved projects that do not obtain funding will be canceled. A more complete description of this program follows.

DATES:

- *Comment Receipt Date:* October 3, 2008.
- *Invitation to Submit Proposals:* Can be submitted on an ongoing basis.
- *Scientific Review Date:* Within two months of proposal submission.
- *Institutional Review Date:* Within one month of final proposal acceptance.
- *Anticipated distribution of samples:* One month after IRB approval.

ADDRESSES: To send comments and to request information, contact: Dr. Geraldine McQuillan, Division of Health and Nutrition Examination Surveys, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 4204, Hyattsville, MD 20782, Phone: 301–458–4371, Fax: 301–458–4028, E-mail *gmm2@cdc.gov.* Internet: *http://www.cdc.gov/nchs/about/major/nhanes/serum1b.htm.*

Authority: Sections 301, 306 and 308 of the Public Health Service Act (42 U.S.C. 241, 242k and 242M).

SUPPLEMENTARY INFORMATION: The goals of NHANES are: (1) To estimate the number and percent of persons in the U.S. population and designated subgroups with selected diseases and risk factors; (2) to monitor trends in the prevalence, awareness, treatment and control of selected diseases; (3) to monitor trends in risk behaviors and environmental exposures; (4) to analyze risk factors for selected diseases; (5) to study the relationship between diet, nutrition and health; (6) to explore emerging public health issues and new technologies; and, (7) to establish and maintain a national probability sample

of baseline information on health and nutrition status.

Specimens are available from the third National Health and Nutrition Examination Survey (NHANES III) and the continuous NHANES that started in 1999. Approximately 30,000 individuals were examined in NHANES III which began in the fall of 1988, and ended in the fall of 1994. This survey can be analyzed in two phases. Phase 1 was conducted from October 1988 to October 1991 and Phase 2 began October 1991 and ended October 1994. Though participants consented to storing samples of their blood for future testing only research projects that include results that are judged not to have clinical significance for participants will be accepted. See: *http://www.cdc.gov/nchs/about/major/nhanes/nh3data.htm* for more information on NHANES III.

Beginning in 1999, NHANES became a continuous, annual survey with examination of approximately 5,000 individuals a year and data release every two years. Proposed research projects and samples requested must come from this two-year design (i.e. request must be for 1999–2000 samples or 2001–2002, etc.). Samples from a single year of the survey will not be provided for research projects, but multiple two-year cycles may be requested. For details of the sampling design see the Analytic Guidelines at: *http://www.cdc.gov/nchs/about/major/nhanes/nhanes2003-2004/analytical_guidelines.htm.*

Starting in 1999 to 2008 survey participants were informed in the consent document for future laboratory analysis that they would not receive the results from these studies. Therefore, only research projects that propose laboratory results that do not have clinical relevance to an individual will be accepted by NCHS. Clinical significance of a laboratory test will be judged by the NHANES Medical Officer, but the researcher should address this in the research proposal. See *http://www.cdc.gov/nchs/about/major/nhanes/nhanes2007-2008/current_nhanes_07_08.htm* for a copy of the current consent document.

All proposals for use of NHANES samples will be evaluated by a technical panel for scientific merit and by the NHANES Ethics Review Board (ERB) for any potential human subjects concerns. The NHANES ERB will review the proposal even if the investigator has received approval by their institutional review panel.

To determine if this limited resource should be used in the proposed projects, a Technical Panel will evaluate the public health significance and scientific merit of the proposed research. Scientific merit will be judged as to the scientific, technical or medical significance of the research, the appropriateness and adequacy of the experimental approach, and the methodology proposed to reach the research goals. See 'Criteria for Technical Evaluation of Proposals' below. The proposal should outline how the results from the laboratory analysis will be used. Because NHANES is a complex, multistage probability sample of the national population, the appropriateness of the NHANES sample to address the goals of the proposal will be an important aspect of scientific merit. The survey oversamples the two largest race/ethnic minority groups, non-Hispanic blacks and Mexican Americans along with other subgroups of the population. Sampling weights are therefore used to make national estimates of frequencies. The use of weights, sampling frame and methods of assessment of variables included in the data are likely to affect the proposed research. The Technical Panel will review the analysis plan and evaluate whether the proposal is an appropriate use of the NHANES population. The Technical Panel will also assure that the proposed project does not go beyond either the general purpose for collecting the samples in the survey, or of the specific stated goals of the proposal.

Investigators are encouraged to review the NHANES data, survey documents, manuals and questionnaires at: *http://www.cdc.gov/nchs/about/major/nhanes/nhanes99-02.htm* or for NHANES III: *http://www.cdc.gov/nchs/about/major/nhanes/nh3data.htm.*

Procedures for Proposals

All investigators (including CDC investigators) must submit a proposal for use of NHANES specimens.

Proposals are limited to a maximum of 10 single-spaced typed pages, excluding figures and tables, using 10 cpi type density. The cover of the proposal should include the name, address, and phone number and E-mail address of the principal investigator (PI) and the name of the institution where the laboratory analysis will be done. All proposals should be E-mailed to *gmm2@cdc.gov.* Proposals must include a cover page with the title of the proposal and the name, address, phone number and E-mail address of all investigators. Proposals from CDC investigators must also include investigators scientific ethic verification number.

The following criteria will be used for technical evaluation of proposals:

Proposals should include the following information:

(1) *Specific Aims:* List the broad objectives; describe concisely and realistically what the research is intended to accomplish, and state the specific hypotheses to be tested. NHANES is designed to provide prevalence estimates of diseases or conditions that are expected to affect between 5–10 percent of the population. Research proposals that expect much lower prevalence estimates need to provide more detail on why specimens from NHANES are needed for the project and provide details on how these data will be analyzed.

(2) *Background and Public Health Significance:* Describe the public health significance, scientific merit and practical utility of the assay. Briefly describe in 1–2 pages the background of the proposal, identifying gaps in knowledge that the project is intended to fill. State concisely the importance of the research in terms of the broad, long-term objectives and public health relevance including a discussion of how the results will affect public health policy or further scientific knowledge. The proposal should justify the need for specimens that are representative of the U.S. population. The proposer should convey how the results will be used and the relationship of the results to the data already collected in NHANES. The proposer should include an analysis plan. The analyses ought to be consistent with the NHANES mission and the health status variables.

(3) *Research Design and Methods:* Describe the research design and the procedures to be used. A detailed description of laboratory methods including validity and reliability must be included with references. The volume of specimen and number of samples requested must be specified. Adequate methods for handling and storage of samples must also be addressed. The laboratory must demonstrate expertise in the proposed laboratory test including the capability for handling the workload requested in the proposal. The proposal should also include a justification for determination of sample size or a power calculation. If the researcher is requesting a sub-sample of specimens, a detailed description and justification, must be given. The researcher must describe how this sub-sample will be re-weighted to provide national estimates. The program will evaluate the study design and analysis plan in the proposal to determine whether the project is consistent with the design of the NHANES survey. Sub-samples are less useful to the research community when

the data are released in the public domain, so such requests will receive a lower priority for the specimens. Restricting a research proposal to demographic categories that are design variables for the survey is encouraged if laboratory testing must be restricted.

(4) *Clinical Significance or results:* Since the consent document for specimen storage and continuing studies states that individual results will not be provided, the clinical significance of the proposed laboratory test should be addressed.

The proposal should include a discussion of the potential clinical significance of the results and whether there is definitive evidence that results of the test would provide grounds for medical intervention even if many years have passed since the examination of the participant and collection of the sample. Any test with results that should be reported to a participant should be considered for inclusion in the concurrent survey, and is not appropriate for testing on the stored samples.

(5) *Qualification:* Provide a brief description of the Principal Investigator's expertise in the proposed area should be provided, including publications in this area within the last three years. A representative sample of earlier publications may be listed as long as this section does not exceed two pages.

(6) *Period of performance:* Specify the project period. Substantial progress must be made in the first year, and the project should be completed in two years. If additional time is needed for the research project a detailed justification with a timeline should be included. The investigator should address his/her ability to comply with this timeline or request and justify additional time for the project. Return of the specimens will be requested if progress is not made in the project at the end of the second year. Refund of payment for the specimens will not be returned in this situation. At the end of the project period, any unused samples must be returned to the NHANES Specimen Bank or discarded. The NCHS Project Officer must be consulted about the disposition of the samples.

(7) *Funding:* Include the source and status of the funding to perform the requested laboratory analysis should be included. Investigators will be responsible for the cost of processing and shipping the samples. The cost per specimen is $6.50. The basis for the cost structure is in the last section of this document. Reimbursement for the samples will be collected before the samples are released.

Submission of Proposals

Proposals can be submitted in MS Word format by E-mail to: Dr. Geraldine McQuillan, Division of Health and Nutrition Examination Surveys, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 4204, Hyattsville, MD 20782, Phone: 301–458–4371 Fax: 301–458–4028, E-mail *gmm2@cdc.gov.*

Approved Proposals

Approved projects will be provided specimens on receipt of a signed Materials Transfer Agreement (MTA) and a check (written to The Centers for Disease Control and Prevention) for the cost of the specimens. All laboratory results obtained from the samples will be sent back to NCHS to be linked to the sequence number that is the linking identifier on the public use files. All files will undergo disclosure review at NCHS. Within 90 days of the return of the data to NCHS these data may be released to the public.

Agency Agreement

A formal signed agreement in the form of a Materials Transfer Agreement (MTA) with individuals who have projects approved will be completed before the release of the samples. This agreement will contain the conditions for use of the samples as stated in this document and as agreed upon by the investigators and CDC.

Progress Reports

Brief progress report will be submitted annually. This will be the basis for the NHANES ERB continuation reports that are required annually.

Disposition of Results and Samples

No samples provided can be used for any purpose other than those specifically requested in the proposal and approved by the Technical Panel and the NHANES ERB. No sample can be shared with others, including other investigators, unless specified in the proposal and so approved. Any unused samples must be returned to the NHANES Specimen Bank or disposed of upon completion of the approved project. These results, once returned to NCHS, will be part of the public domain. The proposer will have 90 days for quality control review of the data before public release.

Proposed Cost Schedule for Providing NHANES Specimens:

A nominal processing fee of $6.50 is proposed for each sample received from the NHANES Specimen Bank. The costs include both the collection, storage and processing of the specimens along with the review of proposals and the preparation of the data files. These costs were based on an assumption that NCHS will receive and process eight proposals in a year, each requesting 5,000 samples as shown in the table below.

The materials listed are for the recurring laboratory costs to dispense and prepare the samples during collection and for shipping; the computer software needed for the preparation of the data files and for the release of the data along with documentation on the NHANES Web page. Labor costs are based on a proposal administrator and computer programmers at NCHS to prepare the data files. The storage and pulling fees include the costs for the NHANES repository.

Total costs	Cost
Labor	$0.70
Collection Storage	2.96
Pulling specimens	1.04
Shipping	0.31
Subtotal	5.01
CDC/FMO support (10%)	0.50
Subtotal	5.51
NCHS support (18%)	0.99
Total	6.50

Comments are solicited on the proposed cost schedule. Comments are due by: October 3, 2008.

Send Comments and Requests for Information to: Dr. Geraldine McQuillan, Division of Health and Nutrition Examination Surveys, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 4204, Hyattsville, MD 20782, Phone: 301–458–4371; Fax: 301–458–4028, e-mail *gmm2@cdc.gov.*

Dated: August 26, 2008.

James D. Seligman,

Chief Information Officer, Centers for Disease Control and Prevention.

[FR Doc. E8–20335 Filed 9–2–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notification of the Establishment of the National Commission on Children and Disasters

AGENCY: Administration for Children and Families, Department of Health and Human Services.

ACTION: Notification of the establishment of the National Commission on Children and Disasters.

SUMMARY: This notice announces the establishment of the National Commission on Children and Disasters, a Secretary's Advisory Committee. The Consolidated Appropriations Act, 2008 (Pub. L. 110–161), Division G, Title VI, directs the establishment of the National Commission on Children and Disasters. The Commission shall conduct a comprehensive study to examine and assess the needs of children as they relate to preparation for, response to, and recovery from all hazards, building upon the evaluation of other entities and avoiding unnecessary duplication by reviewing the findings, conclusions, and recommendations of these entities, and shall then submit a report to the President and Congress on the Commission's specific findings, conclusions, and recommendations to address the needs of children as they relate to major disasters and emergencies.

FOR FURTHER INFORMATION CONTACT: Roberta Lavin, Office of Human Services Emergency Preparedness and Response, e-mail *Roberta.lavin@acf.hhs.gov* or 202–401–9306.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission and its staff are governed by the provisions of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), which sets forth the standards for the formation and use of advisory committees. The Secretary's establishment of this Commission is authorized pursuant to Section 1114 of the Social Security Act (42 U.S.C. 1314).

The Commission shall determine a schedule of meetings following an election of a Chairperson and Vice Chairperson from among its members. An initial meeting of the Commission shall take place not later than 120 days after all members of the Commission have been appointed.

II. Criteria for Members

The Commission shall be composed of ten members, of whom one shall be the Chairperson and one shall be the Vice Chairperson, as determined by an election among the total membership, and shall be appointed by the Secretary in a manner designed to assure bipartisan representation on the Commission, in accordance with the intent of Congress as follows:

- No members of the Commission may be officials or employees of the Federal Government;
- At least one member appointed to the Commission must be a representative from a private nonprofit entity with demonstrated experience in addressing the needs of children as they relate to preparation for, response to, and recovery from all hazards, including major disasters and emergencies; and
- At least one member appointed to the Commission must be a State emergency manager or local emergency manager.

III. Copies of the Charter

To obtain a copy of the Commission's Charter, submit a written request to the above contact.

Dated: August 27, 2008.

Daniel C. Schneider,

Acting Assistant Secretary for Children and Families.

[FR Doc. E8–20378 Filed 9–2–08; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–F–0462]

Zentox Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Zentox Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of monochloramine as an antimicrobial agent in poultry process chiller water.

DATES: Submit written or electronic comments on the petitioner's environmental assessment by October 3, 2008.

ADDRESSES: Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Judith Kidwell, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1071.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8A4775) has been filed by Zentox Corp., c/o Burdock Group, 801 North Orange Ave., suite 710, Orlando, FL 32801. The petition proposes to amend the food additive regulations in part 173—*Secondary Direct Food Additives Permitted in Food for Human Consumption* (21 CFR part 173) to provide for the safe use of monochloramine as an antimicrobial agent in poultry process chiller water.

The potential environmental impact of this petition is being reviewed. To encourage public participation consistent with regulation issued under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Division of Dockets Management (see **DATES** and **ADDRESSES**) for public review and comment.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required, and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.51(b).

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

Dated: August 27, 2008.

Laura M. Tarantino,

Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. E8–20293 Filed 9–2–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0470]

International Conference on Harmonisation; Draft Guidance on M3(R2) Nonclinical Safety Studies for the Conduct of Human Clinical Trials and Marketing Authorization for Pharmaceuticals; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''M3(R2) Nonclinical Safety Studies for the Conduct of Human Clinical Trials and Marketing Authorization for Pharmaceuticals.'' The draft guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft guidance, which is a revision of an existing guidance, discusses the types of nonclinical studies, their scope and duration, and their relation to the conduct of human clinical trials and marketing authorization for pharmaceuticals. The draft guidance is intended to facilitate the timely conduct of clinical trials and reduce the unnecessary use of animals and other drug development resources.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by October 20, 2008.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send two self-addressed adhesive labels to assist the office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Abigail Jacobs, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 6484, Silver Spring, MD, 20993–0002, 301–796–0174, or Martin D. Green, Center for Biologics Evaluation and Research (HFM–475), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–3070.

Regarding the ICH: Michelle Limoli, Office of International Programs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4480.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada, and the European Free Trade Area.

In June 2008, the ICH Steering Committee agreed that a draft guidance entitled ''M3(R2) Nonclinical Safety Studies for the Conduct of Human Clinical Trials and Marketing Authorization for Pharmaceuticals'' should be made available for public comment. The draft guidance is the product of the Multidisciplinary Safety and Efficacy (M3) Expert Working Group of the ICH. Comments about this draft will be considered by FDA and the M3 Expert Working Group.

The purpose of the draft guidance is to recommend international standards for, and promote harmonization of, the nonclinical safety studies recommended to support human clinical trials of a given scope and duration. The revisions in this draft guidance further harmonize the recommendations in a number of areas and include a new section on exploratory clinical studies. The recommendations should promote safe and ethical development and availability of new pharmaceuticals.

The document provides guidance on nonclinical safety studies and their relation to the conduct of human clinical trials and marketing of a pharmaceutical, primarily addressing timing. The discussion includes safety pharmacology studies, repeated dose toxicity studies, toxicokinetic and nonclinical pharmacokinetic studies, reproduction toxicity studies, genotoxicity studies, and (for drugs that have special cause for concern or are intended for a long duration of use) an assessment of carcinogenic potential. The draft guidance discusses other nonclinical studies that should be conducted on a case-by-case basis as appropriate, including phototoxicity studies, immunotoxicity studies, juvenile animal toxicity studies, and abuse potential studies.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the draft guidance. Submit a single copy of electronic comments or

two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.regulations.gov*, *http://www.fda.gov/cder/guidance/index.htm*, or *http:www/fda.gov/cber/guidelines.htm*.

Dated: August 26, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–20294 Filed 9–2–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0038]

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Vaccines and Related Biological Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 25, 2008, from 8:30 a.m. to approximately 4 p.m.

Location: Crowne Plaza Hotel, 8777 Georgia Ave., Silver Spring, MD 20910

Contact Person: Christine Walsh or Denise Royster, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD, 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512391. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: In open session the Committee will be briefed on the Office of Vaccine's Research and Review (OVRR), Center for Biologics Evaluation and Research (CBER) response to OVRR Office Site Visit Review Report that was presented and approved by this committee on January 25, 2007. The Committee will also hear presentations and hold discussion on the use of Madin-Darby canine kidney (MDCK) Cells for manufacture of live attenuated Influenza Virus Vaccines.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2008 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before September 18, 2008. Oral presentations from the public will be scheduled between approximately 2 p.m. and 3 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before September 8, 2008. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by September 11, 2008.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Christine Walsh or Denise Royster at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 27, 2008.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E8–20372 Filed 9–2–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Heritable Disorders in Newborns and Children; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), notice is hereby given of the following meeting:

Name: Advisory Committee on Heritable Disorders in Newborns and Children (ACHDNC).

Dates and Times: October 1, 2008, 1 p.m. to 5 p.m.; October 2, 2008, 8 a.m. to 3 p.m.

Place: Capital Hilton, 1001 16th Street, NW., Washington, DC 20036.

Status: The meeting will be open to the public with attendance limited to space availability. Participants are asked to register for the meeting by going to the registration Web site at *http://events.SignUp4.com/ACHDNC1008*. Individuals who need special assistance, such as sign language interpretation or other reasonable accommodations, should indicate their

needs on the registration Web site. The registration deadline is Tuesday, September 30, 2008. If there are technical problems gaining access to the Web site, please contact Tamar R. Shealy, Meetings Manager, Conference and Meetings Management, Altarum Institute, telephone: (202) 828–5100.

Purpose: The ACHDNC was established to advise and guide the Secretary regarding the most appropriate application of universal newborn screening tests, technologies, policies, guidelines and programs for effectively reducing morbidity and mortality in newborns and children having or at risk for heritable disorders. The ACHDNC also provides advice and recommendations concerning the grants and projects authorized under the Heritable Disorders Program.

Agenda: The meeting will include presentations and continued discussions on the nomination/evaluation process for newborn screening candidate conditions. There will be presentations on emergency preparedness and contingency planning for newborn screening, as well as presentations on the continued work and reports of the ACHDNC's subcommittees on laboratory standards and procedures, follow-up and treatment, and education and training.

Proposed agenda items are subject to change as priorities dictate. The Agenda, Committee Roster and Charter, presentations, and meeting materials can be located at the home page of the Web site at *http://events.SignUp4.com/ACHDNC1008*.

Public Comments: Members of the public can present oral comments during the public comment period of the meeting. Those individuals are required to register online by Tuesday, September 30, 2008, at *http://events.SignUp4.com/ACHDNC1008*. Requests will contain the name, address, telephone number, and any professional or business affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The list of public comment participants will be posted on the Web site. Parties wishing to submit written comments should ensure that the comments are postmarked or e-mailed no later than Friday, September 26, 2008, for consideration. Comments should be submitted to Tamar R. Shealy, Meetings Manager, Conference and Meetings Management, Altarum Institute, 1200 18th Street, NW., Suite 700, Washington, DC 20036, telephone: (202) 828–5100; fax: (202) 785–3083, or e-mail: *Tamar.Shealy@altarum.org*.

Contact Person: Anyone interested in obtaining other relevant information should write or contact Jill F. Shuger, M.S., Maternal and Child Health Bureau, Health Resources and Services Administration, Room 18A–19, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–1080, *jshuger@hrsa.gov*. Information on the Advisory Committee is available at *http://mchb.hrsa.gov/heritabledisorderscommittee*.

Dated: August 27, 2008.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E8–20441 Filed 9–2–08; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Biomedical Computing and Health Informatics Study Section, October 2, 2008, 8 a.m. to October 2, 2008, 5 p.m., Hilton Washington DC/Rockville, 1750 Rockville Pike, Rockville, MD 20852, which was published in the **Federal Register** on August 18, 2008, 73 FR 48219–48220.

The meeting will be held October 2, 2008, 8 a.m. to 12:30 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: August 25, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–20192 Filed 9–2–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors of the NIH Clinical Center.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the Clinical Center, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors of the NIH Clinical Center.

Date: September 8–9, 2008.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate the Transfusion Medicine Department Review.

Place: National Institutes of Health, Building 10, 10 Center Drive, Room 4–2551, Bethesda, MD 20892.

Contact Person: David K. Henderson, MD, Deputy Director for Clinical Care, Office of the Director, Clinical Center, National Institutes of Health, Building 10, Room 6–1480, Bethesda, MD 20892, (301) 496–3515.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

Dated: August 25, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–20190 Filed 9–2–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Cellular, Molecular and Integrative Reproduction Study Section, September 15, 2008, 8 a.m. to September 16, 2008, 3 p.m., Mayflower Park Hotel, 405 Olive Way, Seattle, WA 98101, which was published in the **Federal Register** on August 18, 2008, 73 FR 48219–48220.

The meeting will be held one day only September 15, 2008, from 8 a.m. to 6 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: August 25, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–20193 Filed 9–2–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(cX4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Clinical Applications.
Date: September 22–23, 2008.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)
Contact Person: Rass M. Shayiq, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–2359, *shayiqr@csr.nih.gov*.

Name of Committee: Musculoskeletal, Oral and Skin Sciences, Integrated Review Group, Arthritis, Connective Tissue and Skin Study Section.
Date: September 22–23, 2008.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.
Contact Person: Aftab A. Ansari, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, (301) 594–6376, *ansaria@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, LCMI Member Conflicts.
Date: September 23–24, 2008.
Time: 9 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)
Contact Person: Ghenima Dirami, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2159, MSC 7818, Bethesda, MD 20892, 301–594–1321, *diramig@csr.nih.gov*.

Name of Committee: Oncological Sciences Integrated Review Group, Basic Mechanisms of Cancer Therapeutics Study Section.
Date: September 25–26, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Allerton Hotel Chicago on Magnificent Mile, 701 North Michigan Avenue, Chicago, IL 60611.
Contact Person: Lambratu Rahman, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, 301–451–3493, *rahmanl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Biomaterials for Tissue Engineering and Gene Delivery.
Date: September 25, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Alexander Gubin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 5144, MSC 7812, Bethesda, MD 20892, 301–435–2902, *gubina@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Rhythms and Sleep.
Date: September 25, 2008.
Time: 2 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)
Contact Person: Edwin C. Clayton, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5095C, MSC 7844, Bethesda, MD 20892, (301) 402–1304, *claytone@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Molecular Oncogenesis Study Section.
Date: September 29–30, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.
Contact Person: Joanna M. Watson, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892, 301–435–1048, *watsonjo@csr.nih.gov.*

Name of Committee: Renal and Urological Studies Integrated Review Group, Urologic and Kidney Development and Genitourinary Diseases, Study Section.
Date: September 29–30, 2008.
Time: 8 a.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: Mayflower Park Hotel, 405 Olive Way, Seattle, WA 98101.
Contact Person: Ryan G. Morris, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4205, MSC 7814, Bethesda, MD 20892, 301–435–1501, *morrisr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: CIGP and XNDA.
Date: September 29, 2008.
Time: 11 a.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)
Contact Person: Peter J. Perrin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, (301) 435–0682, *perrinp@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive, Sciences Integrated Review Group, Integrative Physiology of Obesity and Diabetes, Study Section.
Date: October 2, 2008.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites Washington, DC Convention Center, 900 10th Street, NW., Washington, DC 20001.
Contact Person: Reed A. Graves, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892, (301) 402–6297, *gravesr@csr.nih.gov.*

Name of Committee: Center for Scientific Review, Special Emphasis Panel, Human MicroBiome Demonstration.
Date: October 2–3, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Alexandria Hilton, 1767 King Street, Alexandria, VA 22314.
Contact Person: Roll Menzel, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3196, MSC 7808, Bethesda, MD 20892, 301–435–0952, *menzelro@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group.
Date: October 2, 2008.
Time: 1:30 p.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Hotel Rockville, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Bill Bunnag, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5124, MSC 7854, Bethesda, MD 20892, (301) 435–1177, *bunnagb@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group Cancer, Biomarkers Study Section.
Date: October 6–7, 2008.
Time: 7:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.

Place: Holiday Inn San Francisco Fisherman's Wharf, 1300 Columbus Avenue, San Francisco, CA 94133.

Contact Person: Steven B. Scholnick, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7804, Bethesda, MD 20892, 301–435–1719, *scholnis@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience, Integrated Review Group, Clinical Neuroscience and Neurodegeneration Study Section.

Date: October 6, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: DoubleTree Hotel Washington, DC, 1515 Rhode Island Avenue, NW., Washington, DC 20005.

Contact Person: Rene Etcheberrigaray, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *etcheber@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Collaborative Applications in Child Psychopathology.

Date: October 7, 2008.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Jane A. Doussard-Roosevelt, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–4445, *doussarj@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Radiation Therapeutics and Biology Study Section.

Date: October 9–10, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Le Meridien Hotel, 333 Battery Street, San Francisco, CA 94111.

Contact Person: Bo Hong, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–435–5879, *hongb@csr.nih.gov.*

Name of Committee: Cardiovascular Sciences Integrated Review Group, Hypertension and Microcirculation Study Section.

Date: October 9–10, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Ai-Ping Zou, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–435–1777, *zouai@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts in Biological Chemistry and Macromolecular Biophysics.

Date: October 9–10, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).

Contact Person: Donald L. Schneider, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5160, MSC 7842, Bethesda, MD 20892, (301) 435–1727, *schneidd@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior, Integrated Review Group, Psychosocial Development, Risk and Prevention, Study Section.

Date: October 9–10, 2008.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Washington, DC, 1515 Rhode Island Avenue, NW., Washington, DC 20005.

Contact Person: Anna L. Riley, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7759, Bethesda, MD 20892, 301–435–2889, *rileyann@csr.nih.gov.*

Name of Committee: Hematology Integrated Review Group Hematopoiesis, Study Section.

Date: October 9–10, 2008.

Time: 8 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: Wyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Manjit Hanspal, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7804, Bethesda, MD 20892, 301–435–1195, *hanspalm@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes, Integrated Review Group, Biobehavioral Regulation, Learning and Ethology, Study Section.

Date: October 9–10, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Deca, 4507 Brooklyn Avenue, NE., Seattle, WA 98105.

Contact Person: Melissa Gerald, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0692, *geraldmel@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group Kidney, Nutrition, Obesity and Diabetes Study Section.

Date: October 9, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231.

Contact Person: Fungai F. Chanetsa, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135, MSC 7770, Bethesda, MD 20892, 301–435–1262, *chanetsaf@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group. Cellular and Molecular Immunology—A Study Section.

Date: October 9–10, 2008.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, NW., Washington, DC 20037.

Contact Person: Samuel C. Edwards, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7812, Bethesda, MD 20892, (301) 435–1152, *edwardss@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience, Integrated Review Group Sensorimotor Integration, Study Section.

Date: October 10, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sir Frances Drake Hotel, 450 Powell Street, San Francisco, CA 94102.

Contact Person: John Bishop, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250, *bishopj@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group. Integrative Nutrition and Metabolic Processes, Study Section.

Date: October 10, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton, San Francisco Fisherman's Wharf, 2620 Jones Street, San Francisco, CA 94014.

Contact Person: Sooja K. Kim, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6182, MSC 7892, Bethesda, MD 20892, (301) 435–1780, *kims@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Anterior Eye Disease Member Conflict.

Date: October 10, 2008.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: George Ann Mckie, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1124, MSC 7846, Bethesda, MD 20892, 301–435–1049, *mckiegeo@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 25, 2008.

Jennifer Spaeth

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–20188 Filed 9–2–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Fogarty International Center; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Fogarty International Center Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Fogarty International Center Advisory Board.

Date: September 8–9, 2008.

Closed: September 8, 2008, 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Lawton Chiles International House, Bethesda, MD 20892.

Closed: September 9, 2008, 8:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Lawton Chiles International House, Bethesda, MD 20892.

Open: September 9, 2008, 10:30 a.m. to 3 p.m.

Agenda: The agenda will include an update on FIC activities and plans. Topics to be discussed: Making e-Health Connections: Global Partnerships, Local Solutions; Public-Private Partnerships: the Potential Role of FIC.

Place: National Institutes of Health, Lawton Chiles International House, Bethesda, MD 20892.

Contact Person: Robert Eiss, Public Health Advisor, Fogarty International Center, National Institutes of Health, 31 Center Drive, Room B2c02, Bethesda, MD 20892, (301) 496–1415, *EISSR@MAIL.NIH.GOV*.

This meeting is being published less than 15 days prior to the meeting due to timing limitations imposed by administrative matters.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.nih.gov/fic/about/advisory.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.106, Minority International Research Training Grant in the Biomedical and Behavioral Sciences; 93.154, Special International Postdoctoral Research Program in Acquired Immunodeficiency Syndrome; 93.168, International Cooperative Biodiversity Groups Program; 93.934, Fogarty International Research Collaboration Award; 93.989, Senior International Fellowship Awards Program, National Institutes of Health, HHS)

Dated: August 27, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–20421 Filed 9–2–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, SBIR Phase II Chemical Optimization and Structure-Activity Relationship.

Date: September 23, 2008.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call)

Contact Person: Lalita D. Palekar, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 7141, Bethesda, MD 20892–7405, 301–496–7575, *palekarl@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel, Cancer Prevention Research Small Grant Program.

Date: September 30, 2008.

Time: 9 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852.

Contact Person: Adriana Stoica, Scientific Review Officer, Special Review & Logistics Branch, Division of Extramural Activities, National Cancer Insitute, NIH, 6116 Executive Blvd, Ste 703, Rm 7072, Bethesda, MD 20892–8329, 301–594–1408, *Stoicaa2@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel, Review of Career Development Awards.

Date: October 29, 2008.

Time: 10 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Jeannette F. Korczak, PhD, Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 8115, Bethesda, MD 20892, 301–496–9767, *korczakj@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel, Small Grants Program for Cancer Epidemiology.

Date: November 13–14, 2008.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Legacy Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Joyce C. Pegues, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, NIH National Cancer Institute, 6116 Executive Boulevard, Room 7149, Bethesda, MD 20892–8329, 301–594–1286, *peguesj@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 25, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–20319 Filed 9–2–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, SBIR Phase II Chemical Optimization and Structure-Activity Relationship.

Date: September 23, 2008.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call)

Contact Person: Lalita D. Palekar, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 7141, Bethesda, MD 20892–7405, 301–496–7575, *palekarl@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel, Cancer Prevention Research Small Grant Program.

Date: September 30, 2008.

Time: 9 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852.

Contact Person: Adriana Stoica, Scientific Review Officer, Special Review & Logistics Branch, Division of Extramural Activities, National Cancer Insitute, NIH, 6116 Executive Blvd, Ste 703, Rm 7072, Bethesda, MD 20892–8329, 301–594–1408, *Stoicaa2@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel, Review of Career Development Awards.

Date: October 29, 2008.

Time: 10 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Jeannette F. Korczak, PhD, Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 8115, Bethesda, MD 20892, 301–496–9767, *korczakj@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel, Small Grants Program for Cancer Epidemiology.

Date: November 13–14, 2008.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Legacy Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Joyce C. Pegues, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, NIH National Cancer Institute, 6116 Executive Boulevard, Room 7149, Bethesda, MD 20892–8329, 301–594–1286, *peguesj@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 25, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–20319 Filed 9–2–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of 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 Cancer Institute Initial Review Group, Subcommittee J—Population and Patient-Oriented Training.

Date: October 29, 2008.

Time: 7:45 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Ilda M. Mckenna, PhD, Scientific Review Officer, Research Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8111, Bethesda, MD 20892, 301–496–7481, *mckennai@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 25, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–20321 Filed 9–2–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Systolic Blood Pressure Intervention Trial Coordinating Center.

Date: September 24, 2008.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hilton Washington, DC, Rockville Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Tony L. Creazzo, PhD, Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7180, Bethesda, MD 20892–7924, 301–435–0725, creazzot@mail.nih.gov.

Name of Committee: National Heart, Lung, and Blood Institute, Special Emphasis Panel, Research Project in Cardiovascular Disease.

Date: September 24, 2008.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Youngsuk Oh, PhD, Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892–7924, 301–435–0277, *yoh@mail.nih.gov*.

Name of Committee: National Heart, Lung, and Blood Institute, Special Emphasis Panel, Systolic Blood Pressure Intervention Trial Clinical Center.

Date: September 24–25, 2008.

Time: September 24, 2008, 7 p.m. to 10 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hilton Washington, DC, Rockville Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.

Time: September 25, 2008, 8 a.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hilton Washington, DC, Rockville Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Tony L. Creazzo, PhD, Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7180, Bethesda, MD 20892–7924, 301–435–0725, *creazzot@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: August 25, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–20191 Filed 9–2–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Alcohol, Diabetes, and Cardiometabolic Risk.

Date: September 26, 2008.

Time: 12:15 p.m. to 1:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Carol J. Goter-Robinson, PhD, Scientific Review Officer, Review Branch, Dea, Niddk National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *goterrobinsonc@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: August 27, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–20420 Filed 9–2–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Institutes of Health Peer Review Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Institutes of Health Peer Review, Advisory Committee.

Date: November 3, 2008.

Time: 8:30 a.m. to 5 p.m.

Agenda: Provide technical and scientific advice to the Director, National Institutes of Health (NIH) the Deputy for Extramural Research, NIH and the Director, Center for Scientific Review (CSR), on matters relating broadly to review procedures and policies for the evaluation of scientific and technical merit of applications for grants and awards.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Cheryl A. Kitt, PhD, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3030, MSC 7776, Bethesda, MD 20892, 301–435–1112, *kittc@csr.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 25, 2008.

Jennifer Spaeth,

Director, Office of the Federal Advisory Committee Policy.

[FR Doc. E8–20189 Filed 9–2–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Request for Information

Notice is hereby given of a Request for Information (RFI): Interagency Autism Coordinating Committee Draft Strategic Plan for Autism Spectrum Disorder (ASD) Research is Available for Comment, NOT–MH–08–021, issued by the National Institute of Mental Health on behalf of the Interagency Autism Coordinating Committee (IACC).

The draft Strategic Plan does not include cost estimates for implementation. However, the IACC has

formed a workgroup to advise the IACC about the budgetary requirements needed to fulfill the research objectives described in the draft Strategic Plan. The IACC will review the workgroup recommendations at its next meeting on November 21, 2008.

The purpose of this time-sensitive RFI is to seek comments on the draft Strategic Plan from ASD stakeholders such as individuals with ASD and their families, autism advocates, scientists, health professionals, therapists, educators, officials of state and local programs for ASD, and the public at large. Please see the official RFI notice at *http://grants.nih.gov/grants/guide/notice-files/NOT-MH-08-021.html* for more information and instructions for responding by the deadline of September 30, 2008. Responses should be directed to *iacc@mail.nih.gov.*

Contact Person: Attention: Strategic Plan for ASD Research RFI, Office of the Director, National Institute of Mental Health, NIH, 6001 Executive Boulevard, Room 8235, MSC 9669, Bethesda, MD 20892–9669, *iaccpublicinquiries@mail.nih.gov.*

Information about the IACC is available on the Web site: *http://www.nimh.nih.gov/research-funding/scientific-meetings/recurring-meetings/iacc/index.shtml.*

Dated: August 26, 2008.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–20318 Filed 9–2–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Refugee Resettlement

Single-Source Program Expansion Supplement

AGENCY: Office of Refugee Resettlement, Administration for Children and Families.

ACTION: Notice To Award a Single-Source Program Expansion Supplement to the Catholic Social Services (CSS) Under the Alabama Wilson-Fish Program.

CFDA#: 93.583.

Legislative Authority: The Refugee Act of 1980 as amended, Wilson-Fish Amendment, 8 U.S.C. 1522(e)(7); section 412(e)(7)(A) of the Immigration and Nationality Act.

Amount of Award: $125,163 supplement for current year.

Project Period: 09/30/2005–09/29/2010.

Justification for the Exception to Competition: The Wilson-Fish program is an alternative to the traditional State-administered welfare system for providing integrated assistance and services to refugees, asylees, Amerasian Immigrants, Cuban and Haitian Entrants, and Trafficking Victims. Alabama is one of 12 sites that has chosen this alternative approach.

The supplemental funds will allow the grantee, Catholic Social Services, to provide refugee cash and medical assistance through the end of this fiscal year to eligible refugees (and others eligible for refugee benefits) under the Alabama Wilson-Fish Program.

The primary reason for the grantee's supplemental request is a higher number of arrivals than anticipated when the grantee's budget was submitted and approved last year. The Refugee Act of 1980 mandates that the Office of Refugee Resettlement (ORR) reimburse States and Wilson-Fish projects for the costs of cash and medical assistance for newly arriving refugees. Since 1991, ORR has reimbursed States and Wilson-Fish agencies for providing cash and medical assistance to eligible individuals during their first eight months in the United States.

Hence, the supplement is consistent with the purposes of the Wilson-Fish Program, the Refugee Act of 1980, and ORR policy.

FOR FURTHER INFORMATION CONTACT: Carl Rubenstein, Wilson-Fish Program Manager, Office of Refugee Resettlement, Aerospace Building, 8th Floor West, 901 D Street, SW., Washington, DC 20447. Telephone: 202–205–5933.

Dated: August 19, 2008.

David H. Siegel,

Acting Director, Office of Refugee Resettlement.

[FR Doc. E8–20375 Filed 9–2–08; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Refugee Resettlement

Single-Source Program Expansion Supplement

AGENCY: Office of Refugee Resettlement, Administration for Children and Families.

ACTION: Notice to Award a Single-Source Program Expansion Supplement to Catholic Charities Diocese of San Diego (CCDSD) under the San Diego Wilson-Fish Program. CFDA#: 93.583.

Legislative Authority: The Refugee Act of 1980 as amended, Wilson-Fish Amendment, 8 U.S.C. 1522(e)(7); section 412(e)(7)(A) of the Immigration and Nationality Act.

Amount of Award: $421,124 supplement for current year.

Project Period: 09/30/2005–09/29/2010.

Justification for the Exception to Competition: The Wilson-Fish program is an alternative to the traditional State-administered welfare system for providing integrated assistance and services to refugees, asylees, Amerasian Immigrants, Cuban and Haitian Entrants, and Trafficking Victims. San Diego is one of 12 sites that has chosen this alternative approach.

The supplemental funds will allow the grantee, CCDSD, to provide refugee cash assistance through the end of this fiscal year to eligible refugees (and others eligible for refugee benefits) under the San Diego Wilson-Fish Program.

The primary reason for the grantee's supplemental request is a higher number of arrivals than anticipated when the grantee's budget was submitted and approved last year. The Refugee Act of 1980 mandates that the Office of Refugee Resettlement (ORR) reimburse States and Wilson-Fish projects for the costs of cash and medical assistance for newly arriving refugees. Since 1991, ORR has reimbursed States and Wilson-Fish agencies for providing cash and medical assistance to eligible individuals during their first eight months in the United States.

Hence, the supplement is consistent with the purposes of the Wilson-Fish Program, the Refugee Act of 1980, and ORR policy.

FOR FURTHER INFORMATION CONTACT: Carl Rubenstein, Wilson-Fish Program Manager, Office of Refugee Resettlement, Aerospace Building, 8th Floor West, 901 D Street, SW., Washington, DC 20447. Telephone: 202–205–5933.

Dated: August 20, 2008.

David H. Siegel,

Acting Director, Office of Refugee Resettlement.

[FR Doc. E8–20376 Filed 9–2–08; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908), on September 30, 1997 (62 FR 51118), and on April 13, 2004 (69 FR 19644).

A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov*.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1042, One Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Mandatory Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards that laboratories must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Mandatory Guidelines dated April 13, 2004 (69 FR 19644), the following laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840 / 800–877–7016, (Formerly: Bayshore Clinical Laboratory)

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770 / 888–290–1150

Aegis Sciences Corporation, 345 Hill Ave., Nashville, TN 37210, 615–255–2400, (Formerly: Aegis Analytical Laboratories, Inc.)

Baptist Medical Center-Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917

Diagnostic Services, Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 239–561–8200 / 800–735–5416

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602, 229–671–2281

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310

DynaLIFE Dx *, 10150–102 St., Suite 200, Edmonton, Alberta Canada T5J 5E2, 780–451–3702 / 800–661–9876, (Formerly: Dynacare Kasper Medical Laboratories)

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609

Gamma-Dynacare Medical Laboratories*, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989 / 800–433–3823, (Formerly: Laboratory Specialists, Inc.)

Kroll Laboratory Specialists, Inc., 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130, (Formerly: Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288 / 800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400 / 800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900 / 800–833–3984

(Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 13112 Evening Creek Drive, Suite 100, San Diego, CA 92128, 858–668–3710 / 800–882–7272, (Formerly: Poisonlab, Inc.)

Laboratory Corporation of America Holdings, 550 17th Ave., Suite 300, Seattle, WA 98122, 206–923–7020 / 800–898–0180, (Formerly: DrugProof, Division of Dynacare/Laboratory of Pathology, LLC; Laboratory of Pathology of Seattle, Inc.; DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042 / 800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927 / 800–873–8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

MAXXAM Analytics Inc.,* 6740 Campobello Road, Mississauga, ON, Canada L5N 2L8, 905–817–5700, (Formerly: NOVAMANN (Ontario), Inc.)

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466 / 800–832–3244

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295 / 800–950–5295

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology

Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250 / 800–350–3515
One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)
Oregon Medical Laboratories, 123 International Way, Springfield, OR 97477, 541–341–8092
Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory)
Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991 / 800–541–7891x7
Phamatech, Inc., 10151 Barnes Canyon Road, San Diego, CA 92121, 858–643–5555
Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590 / 800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600 / 877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 866–370–6699 / 818–989–2521, (Formerly: SmithKline Beecham Clinical Laboratories)
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300 / 800–999–5227
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176 x276
Southwest Laboratories, 4645 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507 / 800–279–0027
Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–364–7400, (Formerly: St. Lawrence Hospital & Healthcare System)
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085

*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 13, 2004 (69 FR 19644). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Elaine Parry,

Acting Director, Office of Program Services, SAMHSA.

[FR Doc. E8–19397 Filed 9–2–08; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Advisory Committee for Women's Services; Notice of a Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Substance Abuse and Mental Health Services Administration's (SAMHSA's) Advisory Committee for Women's Services on September 14–15, 2008.

The meeting is open and will include an update on SAMHSA's programs and budget, a listening session on priority issues as identified by the Advisory Committee for Women's Services, and a presentation on gender responsive policies and practices.

Attendance by the public will be limited to the space available. Public comments are welcome. Please communicate with the Committee's Designated Federal Official, Ms. Carol Watkins (see contact information below), to make arrangements to comment or to request special accommodations for persons with disabilities.

Substantive program information, a summary of the meeting, and a roster of Committee members may be obtained either by accessing the SAMHSA Committee's Web site at *https://www.nac.samhsa.gov/* as soon as possible after the meeting, or by contacting Ms. Watkins. The transcript for the meeting will also be available on the SAMHSA Committee's Web site within three weeks after the meeting.

Committee Name: SAMHSA Advisory Committee for Women's Services.

Date/Time/Type: Sunday, September 14, 2008, from 1 p.m.–5:30 p.m.: Open. Monday, September 15, 2008, from 10:30 a.m.–12 noon: Open.

Place: Marriott Tampa Waterside Hotel and Marina, 700 South Florida Avenue, Tampa, Florida 33602.

Contact: Carol Watkins, Designated Federal Official, SAMHSA Advisory Committee for Women's Services, 1 Choke Cherry Road, Room 8–1002, Rockville, Maryland 20857, Telephone: (240) 276–2254; FAX: (240) 276–1024, E-mail: *carol.watkin2@samhsa.hhs.gov*.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. E8–20256 Filed 9–2–08; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket Nos. TSA–2006–24191; Coast Guard–2006–24196]

Transportation Worker Identification Credential (TWIC); Enrollment Date for the Port of Saipan

AGENCY: Transportation Security Administration; United States Coast Guard; DHS.

ACTION: Notice.

SUMMARY: The Department of Homeland Security (DHS) through the Transportation Security Administration (TSA) issues this notice of the date for the beginning of the initial enrollment for the Transportation Worker Identification Credential (TWIC) for the Port of Saipan.

DATES: TWIC enrollment begins in Saipan on September 17, 2008.

ADDRESSES: You may view published documents and comments concerning the TWIC Final Rule, identified by the docket numbers of this notice, using any one of the following methods.

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

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

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

FOR FURTHER INFORMATION CONTACT: James Orgill, TSA–19, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220. Transportation Threat Assessment and Credentialing (TTAC), TWIC Program, (571) 227–4545; e-mail: *credentialing@dhs.gov.*

Background

The Department of Homeland Security (DHS), through the United States Coast Guard and the Transportation Security Administration (TSA), issued a joint final rule (72 FR 3492; January 25, 2007) pursuant to the Maritime Transportation Security Act (MTSA), Public Law 107–295, 116 Stat. 2064 (November 25, 2002), and the Security and Accountability for Every Port Act of 2006 (SAFE Port Act), Public Law 109–347 (October 13, 2006). This rule requires all credentialed merchant mariners and individuals with unescorted access to secure areas of a regulated facility or vessel to obtain a TWIC. In this final rule, on page 3510, TSA and Coast Guard stated that a phased enrollment approach based upon risk assessment and cost/benefit would be used to implement the program nationwide, and that TSA would publish a notice in the **Federal Register** indicating when enrollment at a specific location will begin and when it is expected to terminate.

This notice provides the start date for TWIC initial enrollment at the Port of Saipan on September 17, 2008. The Coast Guard will publish a separate notice in the **Federal Register** indicating when facilities within the Captain of the Port Zone Guam including those in the Port of Saipan must comply with the portions of the final rule requiring TWIC to be used as an access control measure. That notice will be published at least 90 days before compliance is required.

To obtain information on the pre-enrollment and enrollment process, and enrollment locations, visit TSA's TWIC Web site at *http://www.tsa.gov/twic.*

Issued in Arlington, Virginia, on August 28, 2008.

Rex Lovelady,

Program Manager, TWIC, Office of Transportation Threat Assessment and Credentialing, Transportation Security Administration.

[FR Doc. E8–20424 Filed 9–2–08; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–601, Revision of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form I–601, Application for Waiver of Grounds of Inadmissibility; OMB Control Number 1615–0029.

The Department of Homeland Security, U.S. Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until November 3, 2008.

Written comments and suggestions regarding items contained in this notice and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352, or via e-mail at *rfs.regs@dhs.gov*. When submitting comments by e-mail, please add the OMB Control Number 1615–0029 in the subject box.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies' estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Waiver of Grounds of Inadmissibility.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–601. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. The information collected on this form is used by U.S. Citizenship and Immigration Services (USCIS) to determine whether the applicant is eligible for a waiver of excludability under section 212 of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 15,500 responses at 1½ hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 23,250 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit: *http://www.regulations.gov/search/index.jsp.*

We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529, telephone number 202–272–8377.

Dated: August 28, 2008.

Stephen Tarragon,

Acting Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E8–20329 Filed 9–2–08; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–361, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form I–361, Affidavit of Financial Support and Intent to Petition for Legal Custody for Public Law 97–359 Amerasian; OMB Control No. 1615–0021.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS), has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until November 3, 2008

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352, or via e-mail at *rfs.regs@dhs.gov*. When submitting comments by email please add the OMB Control Number 1615–0021 in the subject box.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Affidavit of Financial Support and Intent to Petition for Legal Custody for Public Law 97–359 Amerasian.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–361. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals and households. The information on this form is used in support of Form I–360 (Petition for Amerasian, Widow(er), or Special Immigrant) to ensure financial support for Public Law 97–359 Amerasian. The affidavit is used only to sponsor individuals eligible for immigration under Public Law 97–359.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 50 responses at 30 minutes (.50) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 25 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit the USCIS Web site at: *http://www.regulations.gov/*.

We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529, Telephone number 202–272–8377.

Dated: August 28, 2008.

Stephen Tarragon,

Deputy Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E8–20437 Filed 9–2–08; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–589, Extension of a Currently Approved Information Collection; Request for Comments

ACTION: 60-Day Notice of Information Collection Under Review: Form I–589, Application for Asylum and Withholding of Removal; OMB Control No. 1615–0067.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS), has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until November 3, 2008.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352, or via e-mail at *rfs.regs@dhs.gov*. When submitting comments by e-mail please add the OMB Control Number 1615–0067 in the subject box.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Asylum and for Withholding of Removal.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–589. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. This information collection will be used to determine whether an alien applying for asylum and/or withholding of deportation in the United States is classifiable as a refugee, and is eligible to remain in the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 63,138 responses at 12 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 757,656 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit the USCIS Web site at: *http://www.regulations.gov/*.

We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529, Telephone number 202–272–8377.

Dated: August 28, 2008.

Stephen Tarragon,

Deputy Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E8–20439 Filed 9–2–08; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5187–N–52]

Notice of Proposed Information Collection for Public Comment; Mortgage Credit Analysis for Loan Guarantee Program and Transmittal for Payment of Loan Guarantee Fee

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* November 3, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Lillian L. Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4178, Washington, DC 20410–5000; telephone 202.402.8048 (this is not a toll-free number), or e-mail Ms. Deitzer at *Lillian.L.Deitzer@hud.gov* for a copy of the proposed forms, or other available information.

FOR FURTHER INFORMATION CONTACT: Mary Schulhof, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410; telephone 202–708–0713 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Mortgage Credit Analysis Worksheet for Native American Loan Guarantee Program and Transmittal for Loan Guarantee Fee.

OMB Control Number: 2577–0200.

Description of the need for the information and proposed use: The information is required by section 184 of the Housing and Community Development Act of 1994, as amended by section 701 of the Native American Housing Assistance and Self-Determination Act of 1996 and implementing regulations at 24 CFR section 1005. HUD has the authority to guarantee loans for the construction, acquisition, rehabilitation or refinance of 1- to 4-family homes to be owned by Native Americans in restricted Indian lands or service areas. Mortgage lenders approved by HUD provide borrower and lender information to HUD for guarantee of the loan. If the information were not provided on Forms HUD–53036 and HUD–53038, HUD would be unable to guarantee loans and as a result lenders would be unable to provide financing to Native Americans.

Agency form number: HUD–53036 and HUD–53038.

Members of affected public: Businesses or Other For-Profit.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 2,000 responses (1,000 × 2 forms), on occasion, fifteen minutes to prepare HUD–53036, five minutes to prepare HUD–53038, 334 hours total reporting burden.

Status of the proposed information collection: Revision of currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 28, 2008.

Merrie Nichols-Dixon,

Director for Trouble Agency Recovery Operations.

[FR Doc. E8–20461 Filed 9–2–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5171–N–03]

Federal Housing Administration (FHA) Single Family Mortgage Insurance: Announcement of Moratorium on Risk-Based Premiums

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: Consistent with the Housing and Economic Recovery Act of 2008, signed into law on July 30, 2008, this notice announces a one-year moratorium, commencing October 1, 2008, on premium pricing in accordance with FHA's risk-based premium structure. This structure was set for most Title II single family mortgage insurance programs by a May 13, 2008, notice, which provided for implementation commencing on July 14, 2008. This notice provides directions for FHA-approved mortgagees to ensure their compliance with the moratorium that commences October 1, 2008.

FOR FURTHER INFORMATION CONTACT: Margaret E. Burns, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone number 202–708–2121 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

By notice published by HUD in the **Federal Register** on September 20, 2007 (72 FR 53872), FHA announced its plan to implement risk-based premiums for FHA loans and included the following information in the notice. Section 203(c)(2) of the National Housing Act (12 U.S.C. 1709(c)(2)) provides for upfront and annual mortgage insurance premiums for most FHA single family programs. Such upfront and annual insurance premiums are set at levels not to exceed 2.25 percent [1] and 0.50 percent (0.55 percent for mortgages involving an original principal obligation that is greater than 95 percent of the appraised value of the property), respectively, with a discount available on the upfront premiums for some mortgagors who are first-time homebuyers and who successfully complete pre-purchase homeownership counseling approved by the Secretary.

FHA proposed a range of premiums based on risk, so that it would be able to offer options to: (1) Mortgagees serving borrowers who were previously underserved, or not served, by the conventional marketplace; and (2) mortgagees serving those borrowers wishing to lower their premiums by, for example, increasing their downpayment or by improving their credit scores. Additionally, FHA noted that offering a range of premiums based on risk helps to ensure the future financial soundness of FHA programs that are obligations of the Mutual Mortgage Insurance Fund (MMIF or the Fund).

The September 20, 2007, notice solicited public comment. Following consideration of public comments, on May 13, 2008 (73 FR 27704), FHA issued a notice announcing its risk-based premium structure, which included changes made in response to public comment, and an implementation date of July 14, 2008.

II. Authority for, and Purpose of, This Notice

On July 30, 2008, the President signed into law the Housing and Economic Recovery Act of 2008 (Pub. L. 110–289, 122 Stat. 2654, approved July 30, 2008). Title I of Division B is the FHA Modernization Act of 2008 (Act). Section 2133 of the Act places a one year moratorium on FHA's implementation and carrying out of its risk-based premium structure commencing October 1, 2008. Section 2132 of the Act directs HUD to provide by notice additional requirements necessary to immediately carry out the Act. Consistent with this section, HUD is providing early notice to FHA-approved mortgagees of steps to be taken to ensure compliance with section 2133.

Accordingly, this notice provides directions to FHA-approved mortgagees for the timely and orderly transition into, and out of, the statutory moratorium on risk-based premiums. Given the commencement of the moratorium on October 1, 2008, FHA-approved mortgagees are expected to begin modifying their systems and processes for compliance with the moratorium on risk based pricing in accordance with this notice. In addition to the directions provided in this notice, FHA's Web site at *http://www.fha.gov* provides operational questions anticipated to be asked by FHA-approved mortgagees and provides the answers to these questions.

III. Applicability of Statutory Period

Section 2133 requires that HUD ''shall not take any action to implement or carry out risk-based premiums'' for a 12-month period beginning on October 1, 2008. HUD considers that this moratorium is intended to establish a clearly delineated, one-year period to cease FHA's risk-based pricing of single family mortgage insurance premiums, but is not intended to disrupt the reasonable expectations of borrowers and mortgagees participating in the FHA-insured mortgage lending process. The statute and the risk-based premium notice can be read consistently to address such concerns. The May 13, 2008, notice stated that the risk-based premium structure ''is effective for new FHA case number assignments made on or after July 14, 2008.'' (See 73 FR 27710.) Since the risk-based premium is effective at the point at which a new FHA case number assignment is made, HUD considers the risk-based premium to be carried out at that point. Accordingly, the statutory moratorium shall be effective and carried out on October 1, 2008 for new FHA case number assignments made on or after that date. Again, HUD expects that all FHA-approved mortgagees will begin taking immediate steps to modify their systems and procedures to assure compliance with this requirement by October 1, 2008.

The moratorium will continue for a 12-month period, applying to new FHA case number assignments made through and including September 30, 2009. In this way, the applicability of the term of the statutory period is clearly established, and all participants in the FHA-insured mortgage lending process may adequately prepare for full compliance with the statute. Mortgages with FHA case number assignments made on July 14, 2008, through and including September 30, 2008, shall maintain the risk-based premium structure for the life of the mortgage.

IV. Directions to FHA-Approved Mortgagees on Premium Pricing During Moratorium

FHA is not authorized to, and will not, insure any mortgages for which new FHA case number assignments are made on or after October 1, 2008 and before October 1, 2009, for which the premium has been set in accordance with the May 13, 2008 notice.

[1] First time homebuyers who receive approved counseling pay an up-front premium not to exceed 2.0%. Section 2114 of the FHA Modernization Act (Title I of Division Be of Public Law 110–289, approved July 30, 2008) increased the maximum level of the upfront premium to 3 percent except for first time homebuyers. The maximum level for first time homebuyers was increased to 2.75 percent.

The upfront and annual premiums on mortgages for which new FHA case number assignments are made on or after October 1, 2008 and before October 1, 2009, are as follows:

Upfront Premiums: FHA will charge an upfront premium in an amount equal to the following percentages of the mortgage:

• Purchase Money Mortgages and Full-Credit Qualifying Refinances = 1.75 Percent

• Streamline Refinances (all types) = 1.50 Percent

• FHASecure (Delinquent Mortgagors) = 3.00 Percent.

Annual Premiums: An annual premium, shown in basis points below, to be remitted on a monthly basis, will also be charged based on the initial loan-to-value ratio and length of the mortgage (except for FHASecure delinquent mortgages) according to the following schedule:

• Purchase Money Mortgages, Full-Qualifying Refinances, and Streamline Refinances:

LTV	Annual for Loans >15 years	LTV	Annual for Loans ≤15 years
≤95	50	≤90	None
>95	55	>90	25

• FHASecure (delinquent mortgagors):

LTV	Annual (all loan terms)
≤95	50
>95	55

FHA will issue another notice that will formally advise when the moratorium is concluded and the premium pricing structure that should be followed once the moratorium ends.

V. Additional Premium Pricing Requirements

All FHA-approved mortgagees must begin to modify their systems and procedures to be in compliance with the following additional requirements applicable to any mortgages for which new FHA case number assignments are made on or after October 1, 2008 and before October 1, 2009:

1. The LTV ratio, computed to two decimals (e.g., 95.65) is calculated by dividing the mortgage amount prior to adding on any upfront mortgage insurance premium by the property's sale price or appraised value, whichever is lower.

2. Borrowers who have decision credit scores below 500 must have loan-to-value ratios less than 90 percent to qualify for an FHA-insured mortgage.

3. A ''decision credit score'' is determined for each applicant according to the following guidelines: when three scores are available (one from each national consumer reporting agency: Equifax, TransUnion, and Experian®), the middle value is used; when only two are available, the lesser of the two is chosen; when only one is available, then that score is used. If more than one individual is applying for the same mortgage, the lender should determine the decision credit score for each individual borrower and then use the lowest score to determine the final decision credit score for the application.

4. All borrowers with eligible decision credit scores must be scored by TOTAL.

5. The premium rates established in this notice apply to those forward mortgages insured under FHA's Mutual Mortgage Insurance (MMI) fund, the Section 203(k) rehabilitation mortgage insurance program, and individual condominium units insured under Section 234(c). The premiums in this notice do not apply to mortgages insured under Title I of the National Housing Act, nor to reverse mortgages under FHA's Home Equity Conversion Mortgage (HECM) program. The premiums in this notice also do not apply to Section 223(e) (declining neighborhoods), Section 238(c) (military impact areas in Georgia and New York), Section 247 (Hawaiian Homelands), and Section 248 (Indian Reservations).

Dated: August 26, 2008.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E8–20299 Filed 9–2–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–R–2008–N00168; 30136–1265–0000–S3]

Seney National Wildlife Refuge, Schoolcraft County, MI

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: draft comprehensive conservation plan and environmental assessment; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft comprehensive conservation plan (CCP) and draft environmental assessment (EA) for Seney National Wildlife Refuge (NWR) for public review and comment. In this draft CCP/EA, we describe how we propose to manage the refuge for the next 15 years.

DATES: To ensure consideration, we must receive your written comments by October 8, 2008. An open house style meeting will be held during the comment period to receive comments and provide information on the draft plan. Special mailings, newspaper articles, Internet postings, and other media announcements will inform people of the meetings and opportunities for written comments.

ADDRESSES: Send your comments or requests for more information by any of the following methods. You may also drop off comments in person at Seney NWR.

• *Agency Web site:* View or download a copy of the document and comment at *http://www.fws.gov/midwest/planning/Seney*.

• *E-mail: r3planning@fws.gov.* Include ''Seney Draft CCP/EA'' in the subject line of the message.

• *Fax:* 906–586–3800.

• *Mail:* Refuge Manager, Seney National Wildlife Refuge, 1674 Refuge Entrance Road, Seney, MI 49883–9501.

FOR FURTHER INFORMATION CONTACT: Tracy Casselman, 906–586–9851 Ext 11.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for Seney NWR, which was started with the notice of intent we published in the **Federal Register** on April 21, 2006 (71 FR 20722). For more about the initial process and the history of this refuge, see that notice. Seney NWR was established in 1935 by Executive Order under the Migratory Bird Conservation Act for the protection and production of migratory birds and other wildlife. The Refuge encompasses approximately 95,238 acres; of this area, 25,150 acres comprise the Seney Wilderness Area, in which is contained the Strangmoor Bog National Natural

Landmark. The Refuge is also responsible for the 33-acre Whitefish Point Unit, a former Coast Guard Station at Whitefish Point, in Chippewa County.

The CCP Process

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee), requires us to develop a comprehensive conservation plan 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 toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, plans identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation.

CCP Alternatives and Our Preferred Alternative

Priority Issues

During the public scoping process, we, other governmental partners, and the public identified several priority issues, which include habitat management, invasive and exotic species, and demand for additional visitor services. To address these issues, we developed and evaluated the following alternatives during the planning process.

Alternative 1, Current Management Direction of Opportunistic Conservation, Restoration, and Preservation (No Action)

The current management direction of Seney NWR would be maintained under this alternative. For NEPA purposes, this is referred to as the ''No Action'' alternative, a misnomer as some changes will occur over the next 15 years. Management includes conservation, restoration and preservation but occurs opportunistically as budgets allow. Some programs, especially environmental education and outreach, would see improvements only if budgets increase in the future.

Alternative 2: Management Gradient of Conservation Emphasis (Unit 1), to Conservation-Restoration Emphasis (Unit 2), to Restoration-Preservation Emphasis (Unit 3) and Wilderness Preservation (Unit 4) (Preferred Alternative)

Alternative 2 would segment the Refuge into four general units and apply a management strategy to each unit. The units would follow a general gradient of management from low intensity (wilderness) to higher manipulation (managed impoundments and visitor use). Some high and low intensity management actions would occur in all units. Wildlife needs always receive priority when in conflict with visitor services.

Alternative 3: Management to Emphasize Historic Patterns and Processes through Restoration and Preservation (All Anthropogenic Habitats Removed in Units 2 and 3), and Wilderness Preservation (Unit 4)

Alternative 3 would include the Refuge striving to manage its forests and water to allow unfettered succession to take place. Dynamic events such as windstorms, insect and tree disease outbreaks, flooding and wildfire would play a more substantial role in shaping habitats. Natural events may lead to limitation or closure of some exiting visitor use areas or services. However, crucial Refuge infrastructure such as roads and dikes would be protected from or repaired after destructive circumstances.

Public Meeting

We will give the public an opportunity to provide comments at a public meeting. You may obtain the schedule from the addresses listed in this notice (see **ADDRESSES**). You may also submit comments anytime during the comment period.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should know 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.

Dated: July 22, 2008.

Charles M. Wooley,

Acting Regional Director, U.S. Fish and Wildlife Service, Fort Snelling, Minnesota.

[FR Doc. E8–20351 Filed 9–2–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14938–A, F–14938–B, and F–14938–D; AK–962–1410–HY–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to St. Michael Native Corporation. The lands are in the vicinity of St. Michael, Alaska, and are located in:

Lot 2, U.S. Survey No. 12417, Alaska
Containing 54.85 acres.

Kateel River Meridian, Alaska

T. 24 S., R. 15 W.,
Secs. 1 and 12.
Containing 1,280.00 acres.
T. 23 S., R. 17 W.,
Sec. 18.
Containing 1.17 acres.
T. 24 S., R. 18 W.,
Secs. 6, 7, and 8; Sec. 15; Secs. 17 to 22, inclusive.
Containing 5,646.37 acres.
Aggregating 6,982.39 acres.

The subsurface estate in these lands will be conveyed to Bering Straits Native Corporation when the surface estate is conveyed to St. Michael Native Corporation. Notice of the decision will also be published four times in the Nome Nugget.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until October 3, 2008 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222

West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION, CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Joe J. Labay,

Land Transfer Resolution Specialist, Resolution Branch.

[FR Doc. E8–20339 Filed 9–2–08; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[SDM 98495]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: In the notice published in 73 FR 49217–49218, published August 20, 2008, as FR Doc. E8–19262, make the following correction:

On page 49217, column 3, following T. 7 S., R. 3 E., Sec. 32, should read ''All, except SE¼SE¼ and HES 348''.

Dated: August 25, 2008.

Cindy Staszak,

Chief, Branch of Land Resources.

[FR Doc. E8–20338 Filed 9–2–08; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–936–1430–01; HAG–08–0088; WAOR–60988]

Public Land Order No. 7715; Transfer of Federal Lands for the Lewis and Clark National Historical Park; WA

AGENCY: Bureau of Land Management, Interior.

SUMMARY: This order confirms the transfer of management of 1,246 acres of Federal surveyed and accreted lands thereto, by the Secretary of Interior from the Bureau of Land Management to the Director, National Park Service for the creation of the Lewis and Clark National Historical Park.

DATES: *Effective Date:* September 3, 2008.

FOR FURTHER INFORMATION CONTACT: Michael L. Barnes, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–808–6155.

SUPPLEMENTARY INFORMATION: Public Law No. 108–387 directs the Secretary of the Interior to transfer management of Federal lands described in this order to the Director of the National Park Service for the lands described below.

Order

By virtue of the authority vested in the Secretary of the Interior by Public Law No. 108–387, 118 Stat. 2235, and Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered and confirmed as follows:

1. Subject to valid existing rights (including existing withdrawals), management as to the following described Federal lands is hereby transferred by the Secretary of the Interior from the Bureau of Land Management to the Director, National Park Service:

Willamette Meridian

T. 9 N., R. 11 W.,
Sec. 4, lots 2, 3, and 4, and all accretions thereto;
Sec. 5, lots 2, 3, 4, 5, 7, SE¼NE¼, and E½SE¼, and all accretions thereto;
Sec. 9, lots 2, 3, and 4, and all accretions thereto.

The areas described aggregate 1,246 acres, more or less, in Pacific County.

2. The lands described in Paragraph 1 shall be administered as part of the Lewis and Clark National Historic Park in accordance with the provisions of Public Law No. 108–387.

Dated: July 31, 2008.

C. Stephen Allred,

Assistant Secretary—Land and Minerals Management.

[FR Doc. E8–20404 Filed 9–2–08; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–110–5410–08–FR–D058; DBG–08–1012; IDI–36199]

Notice of Realty Action: Application for Conveyance of Federal Mineral Interests, Washington County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of application.

SUMMARY: The surface owner of the lands described in this notice, aggregating approximately 1,250 acres, has filed an application for the purchase of the federally-owned mineral interests in the lands. Publication of this notice temporarily segregates the mineral interest from appropriation under the public land laws, including the mining law.

DATES: Interested persons may submit written comments to the Bureau of Land Management (BLM) at the address stated below. Comments must be received no later than October 20, 2008.

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. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must clearly state this at the beginning of your written comment. 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. The BLM will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety. All persons who wish to present comments, suggestions, or objections in connection with the pending application may do so by writing to Rosemary Thomas, Four Rivers Field Manager, at the following address.

ADDRESSES: Bureau of Land Management, Boise District Office, 3948 Development Avenue, Boise, ID 83705.

FOR FURTHER INFORMATION CONTACT: Effie Schultsmeier, Realty Specialist, at the above address or at 208–384–3357.

SUPPLEMENTARY INFORMATION: The surface owner of the following described lands has filed an application pursuant to section 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1719(b), for the purchase and conveyance of the Federally-owned mineral interest in the following described lands:

Boise Meridian, Washington County, Idaho

T. 6 N., R. 5 W.,
Sec. 13, SW¼SW¼; Sec. 14, SE¼SW¼, S½SE¼; Sec. 15, SE¼SE¼; Sec. 23, N½, NE¼SW¼, N½SE¼, N½NW¼ NW¼SW¼, S½SW¼NW¼SW¼, E½ NW¼SW¼, N½SE¼SW¼, N½SW¼ SE¼; Sec. 24, W½NW¼, W½NW¼ SW¼.

Total Acres 1,250.00, more or less.

Effective immediately, the BLM will process the pending application in accordance with the regulations stated in 43 CFR part 2720. Written comments concerning the application must be received no later than the date specified above in this notice. The purpose for a purchase and conveyance is to allow consolidation of surface and subsurface minerals ownership where (1) there are no known mineral values or (2) in those instances where the Federal mineral interest reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land than the mineral development.

On September 3, 2008, the mineral interests owned by the United States in the above described lands will be segregated to the extent that they will not be subject to the appropriation under the public land laws, including the mining laws. The segregative effect shall terminate upon issuance of a patent or deed of such mineral interest; upon final rejection of the mineral conveyance application; or September 3, 2010, whichever occurs first.

Authority: 43 CFR 2720.1–1(b).

Rosemary Thomas,

Four Rivers Field Manager.

[FR Doc. E8–20336 Filed 9–2–08; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: U.S. Department of the Interior, National Park Service, Lake Roosevelt National Recreation Area, Coulee Dam, 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 that are in the control of the U.S. Department of the Interior, National Park Service, Lake Roosevelt National Recreation Area, Coulee Dam, WA, that meet the definition of ''unassociated funerary objects'' under 25 U.S.C 3005. They were removed from ten archeological sites within the boundaries of Lake Roosevelt National Recreation Area. Seven of the sites are in Ferry County, WA, and three are in Stevens 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 superintendent, Lake Roosevelt National Recreation Area.

On April 9, 1872, land on the east side of the Columbia River in Washington Territory was set aside as the Colville Reservation by Executive Order. On July 2, 1872, that land was restored to the public domain, and land on the west side of the Columbia River was set aside as the Colville Reservation. On July 1, 1892, Congress restored the north half of the Colville Reservation to the public domain, and reduced tribal lands through allotments to individual Indians under the Dawes Act of 1887. The two constituent tribes of the Confederated Tribes of the Colville Reservation that are traditionally associated with the area are the Colville and Lakes Tribes.

Grand Coulee Dam, initiated by the Bureau of Reclamation in the 1930s, was completed in 1941. Some of the lands inundated by the resulting reservoir had been previously reserved by either the Confederated Tribes of the Colville Reservation, Washington or the Spokane Tribe of the Spokane Reservation, Washington. In 1946, a Tri-Party Agreement among the Bureau of Reclamation, the National Park Service and the Office of Indian Affairs was developed to manage the Coulee Dam Recreation Area in three zones: Reclamation Zone, Recreation Zone, and Reservation Zone. The agreement gave the National Park Service control of land in the Recreation Zone for most purposes, including the management of archeological resources. In 1990, a five-party Lake Roosevelt Cooperative Management Agreement was implemented that included the Confederated Tribes of the Colville Reservation, Washington and the Spokane Tribe of the Spokane Reservation, Washington as signatories. The National Park Service retained control of the Recreation Zone. The recreation area became Lake Roosevelt National Recreation Area in 1997.

The unassociated funerary objects were removed from ten archeological sites on land reserved by the Confederated Tribes of the Colville Reservation, Washington until 1946. The sites were affected by the Bureau of Reclamation's operation of Grand Coulee Dam since the early 1940s, and are within the Recreation Zone managed by the National Park Service. In 2005, the Bureau of Reclamation and the National Park Service jointly determined that Lake Roosevelt National Recreation Area has control of the NAGPRA collections and responsibility for compliance with NAGPRA.

From 1967 to 1978, human remains and associated funerary objects were collected by local residents from eroding shorelines along the banks of Lake Roosevelt or excavated by professional archeologists during legally authorized salvage excavations. The human remains and associated funerary objects were stored at Washington State University (WSU) until mid–1967, when they were moved to the Alfred W. Bowers Laboratory of Anthropology at the University of Idaho (UI). Human remains and associated funerary objects acquired after that time were transferred from Lake Roosevelt to the University of Idaho, and became part of the Kettle Falls Archeological Collection. Prior to the passage of NAGPRA on November 16, 1990, some of the human remains were repatriated to the Confederated Tribes of the Colville Reservation, Washington. In 1992, the Kettle Falls Archeological Collection was transferred to the Bureau of Reclamation's Grand Coulee Dam Administrative Headquarters. In 2006, the collection was transferred to the physical custody of the Confederated Tribes of the Colville Reservation, Washington.

Between 1967 and 1978, human remains and funerary objects were removed from the Freeland Site (45–FE–1). Some of the human remains were repatriated to the Confederated Tribes of the Colville Reservation, Washington, while the rest were accessioned by the National Park Service, and are included in a separate Notice of Inventory Completion. The 1,026 unassociated funerary objects are 2 projectile points, 2 lithic flakes, 516 dentalium shell beads, 241 copper beads, 1 copper pendant, 1 copper plate, 14 copper fragments, 71 pieces of verdigris (copper with a copper sulfate patina), 1 iron axe head, 1 shell, 52 pieces of plant fiber cordage, 1 piece of cordage with non-human hair and leather, 2 pieces of cordage with leather, 107 leather strips, 4 scraps of leather hide, 1 leather knot, 4 pieces of non-human hair, 2 peach pits, 2 lots of quartzite debris, and 1 piece of cedar wood.

The Freeland site is a Native American burial ground dating to the early historic period based upon the nature of associated funerary objects and the condition and preservation of the skeletal elements. The Colville and Lakes Tribes were decimated by smallpox soon after 1800, and the Freeland site has been interpreted as an ''epidemic burial ground.''

In 1971, 1972 and 1978, fragmentary human remains and funerary objects were removed from the Ksunku site (45–FE–45), on the north end of Hayes Island. Stratigraphic evidence indicates that these remains date to approximately 2,500 years B.P. Some of the human remains were repatriated to the Confederated Tribes of the Colville Reservation, Washington, while the rest were accessioned by the National Park Service, and are included in a separate Notice of Inventory Completion. The 83 unassociated funerary objects are 48 flakes, 4 pieces of incised bone, 1 charcoal sample, 2 non-human teeth, 4 quartzite knives, 2 lithic cores, 2 quartzite slabs, 1 scraper, 1 cobble spall hammer, 1 argillite perforator, 1 denticulate, 1 lot of obsidian debris, and 15 pieces of non-human bone.

In 1972, human remains and funerary objects were removed from an eroding burial at the Nancy Creek Site (45–FE–16), described as ''an aboriginal camp, burial, and historic site.'' The human remains were repatriated to the Colville Tribes of the Colville Reservation, Washington. The two unassociated funerary objects are one steatite (soapstone) pipe fragment and one unidentified animal claw.

In 1972 and 1974, human remains and funerary objects were removed from the Chaudiere Site (45–FE–47), a late prehistoric period site. The human remains were repatriated to the Colville Tribe of the Colville Reservation, Washington. The 78 unassociated funerary objects are 5 projectile points, 5 stone knives, 6 choppers, 4 scrapers, 3 stone hammers, 2 charred wood samples, 1 charcoal sample, 1 botanical sample (pine, chokecherry and hazelnut seeds), 27 lithic flakes, 1 core, 2 slate pendants, 5 beaver incisors, 1 bone blanket pin or needle, 1 biface, 1 graver, 1 shaft straightener, 2 copper pendants, 2 pieces of ochre, 1 celt, 1 preform, 1 incised bird bone gaming piece, 1 antler digging stick handle, and 4 antler wedges.

In 1974, human remains and funerary objects were removed from the Sherman Creek Site (45–FE–51), a pit house village and extensive prehistoric cemetery exceeding 1,000 years in antiquity. Some of the human remains were repatriated to the Confederated Tribes of the Colville Reservation, Washington, while the rest were accessioned by the National Park Service, and are included in a separate Notice of Inventory Completion. The 1,306 unassociated funerary objects are 21 quartzite knives, 42 quartzite knife blanks, 2 lithic flakes, 2 partial bone needles, 1,219 glass beads, 1 botanical sample, 1 clay pipe stem fragment, 1 dentalium shell ornament, 1 chopper, 8 incised bird bones, 2 granite net weights, 2 pieces of a bone digging stick handle, 1 wood button, 1 copper button, and 2 incised bone digging stick handles.

In 1974, human remains and funerary objects were removed from the Kwilkin Site (45–ST–98), a late prehistoric period site. The human remains were repatriated to the Confederated Tribes of the Colville Reservation, Washington. The five unassociated funerary objects are five lithic flakes.

In 1974 and 1976, human remains and funerary objects were removed from the Shonitkwu site (45–FE–44), a prehistoric and historic archeological site on Hayes Island. The human remains were repatriated to the Colville Tribes of the Colville Reservation, Washington. The 80 unassociated funerary objects are 5 pieces of charred wood from a burial container, 1 botanical sample, 1 cobble hammer, 25 lithic flakes, 5 projectile points or point fragments, 4 scrapers, 9 stone knives, 2 bifaces, 4 cores, 3 choppers, 1 tubular stone pipe, 2 bird bones, 1 beaver incisor, 3 pieces of iron, 1 iron and wood artifact with a burnt ''X'', 1 copper bead on a piece of cordage, 1 piece of cordage, 1 antler digging stick handle, 5 antler fragments, 1 iron sword blade, 1 quartz core or scraper, 1 quartzite perforator, 1 argillite cobble spall, and 1 quartzite slab.

In 1976, human remains and one funerary object were removed from the Ilthkoyape Site (45–FE–46), a prehistoric pit house village located on the northwest corner of Hayes Island. The human remains were repatriated to the Confederated Tribes of the Colville Reservation, Washington. The one unassociated funerary object is a granite shaft smoother.

In 1976, human remains and funerary objects were removed from the Atslukstsin site (45–ST–45), a late prehistoric/historic site. The human remains were repatriated to the Confederated Tribes of the Colville Reservation, Washington. The 46 unassociated funerary objects are 13 lithic flakes, 2 scrapers, 3 bifaces, 25 dentalium shell beads, 1 quartzite knife, 1 glass button with a metal loop fragment, and 1 mussel shell.

In 1977, human remains and funerary objects were removed from the vicinity of St. Paul's Mission (45–ST–95). The area features prehistoric archeological sites with burials, the mission and an historical, contact-period cemetery. The human remains were repatriated to the Confederated Tribes of the Colville Reservation, Washington. The two unassociated objects are one projectile point and one quartzite knife.

Archeological analysis of the sites, anthropological research, ethnohistorical studies, and tribal oral traditions demonstrate by a preponderance of the evidence that the Native American human remains and funerary objects represent Plateau Culture Area, Interior Salish speakers who have continuously occupied the Columbia River drainage for thousands of years. The ten sites are within the judicially established aboriginal territory of the Confederated Tribes of the Colville Reservation, Washington. Members of the nearby Spokane Tribe of the Spokane Reservation are also Interior Salish speakers, but their aboriginal territory is to the east, along the Spokane River and its tributaries.

Officials of Lake Roosevelt National Recreation Area have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the 2,629 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 Lake Roosevelt National Recreation Area 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 Confederated Tribes of the Colville Reservation, Washington.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Deborah Bird, superintendent, Lake Roosevelt National Recreation Area, 1008 Crest Drive, Coulee Dam, WA 99116–0037, telephone (509) 633–9441, before October 3, 2008. Repatriation of the unassociated funerary objects to the Confederated Tribes of the Colville Reservation, Washington may proceed after that date if no additional claimants come forward.

Lake Roosevelt National Recreation Area is responsible for notifying the Confederated Tribes of the Colville Reservation, Washington that this notice has been published.

Dated: August 11, 2008

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–20411 Filed 9–2–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Lake Roosevelt National Recreation Area, Coulee Dam, 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 and associated funerary objects in the control of the U.S. Department of the Interior, National Park Service, Lake Roosevelt National Recreation Area, Coulee Dam, WA. The human remains and associated funerary objects were removed from six archeological sites within the boundaries of Lake Roosevelt National Recreation Area, Ferry 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 superintendent, Lake Roosevelt National Recreation Area.

On April 9, 1872, land on the east side of the Columbia River in Washington Territory was set aside as the Colville Reservation by Executive Order. On July 2, 1872, that land was restored to the public domain and land on the west side of the Columbia River was set aside as the Colville Reservation. On July 1, 1892, Congress restored the north half of the Colville Reservation to the public domain ,and reduced tribal lands through allotments to individual Indians under the Dawes Act of 1887. The two constituent tribes of the Confederated Tribes of the Colville Reservation that are traditionally associated with the area are the Colville and Lakes Tribes.

Grand Coulee Dam, initiated by the Bureau of Reclamation in the 1930s, was completed in 1941. Some of the lands inundated by the resulting reservoir had been previously reserved by either the Confederated Tribes of the Colville Reservation, Washington or the Spokane Tribe of the Spokane Reservation, Washington. In 1946, a Tri-Party Agreement among the Bureau of Reclamation, the National Park Service and the Office of Indian Affairs was developed to manage the Coulee Dam Recreation Area in three zones: Reclamation Zone, Recreation Zone, and Reservation Zone. The agreement gave the National Park Service control of land in the Recreation Zone for most purposes, including the management of archeological resources. In 1990, a five-party Lake Roosevelt Cooperative Management Agreement was implemented that included the Confederated Tribes of the Colville Reservation, Washington and the Spokane Tribe of the Spokane Reservation, Washington as signatories. The National Park Service retained control of the Recreation Zone. The recreation area became Lake Roosevelt National Recreation Area in 1997.

The human remains and associated funerary objects were removed from six archeological sites on land reserved by the Confederated Tribes of the Colville Reservation, Washington until 1946. The sites were affected by the Bureau of Reclamation's operation of Grand Coulee Dam since the early 1940s, and are within the Recreation Zone managed by the National Park Service. Human remains and associated funerary objects from Lake Roosevelt National Recreation Area were included in a Bureau of Reclamation-wide NAGPRA inventory in 1995, but in 2005, the Bureau of Reclamation and the National Park Service jointly determined that Lake Roosevelt National Recreation Area has control of the NAGPRA collections and responsibility for compliance with NAGPRA.

Dr. Roderick Sprague supervised the removal of most of the human remains and associated funerary objects during legally authorized excavations between 1965 and 1985. The human remains and associated funerary objects were stored at Washington State University (WSU) until mid–1967, when they were moved to the Alfred W. Bowers Laboratory of Anthropology at the University of Idaho (UI). Some of the human remains were repatriated to the Confederated Tribes of the Colville Reservation in the late 1980s. The remaining human remains and associated funerary objects were moved to Washington State University in 1999 and 2000, and were accessioned by the National Park Service. The human remains and objects were transferred to the physical custody of the Confederated Tribes of the Colville Reservation, Washington in 2006.

A detailed assessment of the human remains and associated funerary objects was made by Lake Roosevelt National Recreation Area, Bureau of Reclamation, and Washington State University professional staff, with assistance from a Central Washington University physical anthropologist, and in consultation with representatives of Confederated Tribes of the Colville Reservation, Washington.

In an unknown year, human remains representing a minimum of one individual were removed by unknown persons from the Kettle Falls Railroad Bridge Site (45–FE–38), a historic, early contact period site in Ferry County, WA. No known individual was identified. No associated funerary objects are present.

In 1965, human remains representing a minimum of three individuals were removed from the Kettle Falls Railroad Bridge Site (45–FE–38) in Ferry County, WA. The excavations were initiated by Dr. Sprague in response to looting activity at the site. No known individuals were identified. No associated funerary objects are present.

Between 1967 and 1985, human remains representing a minimum of 26 individuals were removed from the Freeland Site (45–FE–1) in Ferry County, WA. No known individuals were identified. The 402 associated funerary objects are 1 possible quartzite knife fragment or blank, 1 iron bar, 1 piece of splintered and burnt wood, 1 copper or brass button, 1 pewter button, 2 quartzite knife fragments, 2 copper bracelets, 3 bone pendants, 3 pieces of fiber cordage, 3 gun flints, 4 olivella shells, 19 shell disk beads with fiber cordage fragments, 54 copper beads, 85 blue glass beads, and 222 dentalia shells.

The Freeland site is a Native American burial ground dating to the early historic period, based upon the nature of associated funerary objects and the condition and preservation of the skeletal elements. The Colville and Lakes Tribes were decimated by smallpox soon after 1800, and the Freeland site has been interpreted as an ''epidemic burial ground.''

In 1972 and 1978, human remains representing a minimum of two individuals were removed from the Ksunku Site (45–FE–45) on the northern end of Hayes Island in Ferry County, WA. Stratigraphic evidence indicates that these remains date to approximately 2,500 years B.P. No known individuals were identified. The 34 associated funerary objects are 1 quartzite knife, 1 black argillite hammer fragment, 13 pieces of non-human bone, and 19 lithic flakes.

In 1974, human remains representing a minimum of 34 individuals were removed from the Sherman Creek Site (45–FE–51) in Ferry County, WA. Three human crania from this site were given to Lake Roosevelt National Recreation Area staff by an unidentified individual. The rest of the human remains were removed during authorized excavations by Dr. Roderick Sprague in an effort to protect them from vandalism and theft. The Sherman Creek site is a pit house

village and extensive prehistoric cemetery exceeding 1,000 years in antiquity. No known individuals were identified. No associated funerary objects are present.

In 1980, human remains representing a minimum of one individual were removed by the Ferry County sheriff from the Katy Creek Site (45–FE–18), a late prehistoric site in Ferry County, WA. No known individual was identified. No associated funerary objects are present.

In an unknown span of years, human remains representing a minimum of 23 individuals were removed by park visitors and staff from the surface of the Nancy Creek Site (45–FE–16), described as ''an aboriginal camp, burial, and historic site,'' in Ferry County, WA. No known individuals were identified. No associated funerary objects are present.

In 1985, human remains representing a minimum of three individuals were removed from the Nancy Creek Site (45–FE–16), in Ferry County, WA. No known individuals were identified. No associated funerary objects are present.

On the basis of the geographical location of the sites within the Plateau Culture Area, documented burial practices, osteological evidence as described by archeologists and physical anthropologists, and the nature of prehistoric and historic artifacts and archeological sites, the human remains described above are Native American. Archeological analysis of the sites, anthropological research, ethnohistorical studies, and tribal oral traditions demonstrate by a preponderance of the evidence that the Native American human remains and associated funerary objects represent Plateau Culture Area, Interior Salish speakers who have continuously occupied the Columbia River drainage for thousands of years. The six sites are within the judicially established aboriginal territory of the Confederated Tribes of the Colville Reservation, Washington. Members of the nearby Spokane Tribe of the Spokane Reservation, Washington are also Interior Salish speakers, but their aboriginal territory is to the east, along the Spokane River and its tributaries.

Officials of Lake Roosevelt National Recreation Area have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 93 individuals of Native American ancestry. Officials of Lake Roosevelt National Recreation Area also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 436 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 Lake Roosevelt National Recreation Area 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 Colville Reservation, Washington.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Deborah Bird, superintendent, Lake Roosevelt National Recreation Area, 1008 Crest Drive, Coulee Dam, WA 99116–0037, telephone (509) 633–9441, before October 3, 2008. Repatriation of the human remains and associated funerary objects to the Confederated Tribes of the Colville Reservation, Washington may proceed after that date if no additional claimants come forward.

Lake Roosevelt National Recreation Area is responsible for notifying the Confederated Tribes of the Colville Reservation, Washington that this notice has been published.

Dated: August 11, 2008

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–20402 Filed 9–2–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: 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; 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 and associated funerary objects 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, National Park Service, San Juan Island National Historical Park, Friday Harbor, WA. The human remains and associated funerary objects were removed from 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 superintendent, San Juan Island National Historical Park.

This notice corrects the number of associated funerary objects reported in a Notice of Inventory Completion published in the **Federal Register** on July 18, 2008.

In the **Federal Register** of July 18, 2008 (FR Doc E8–16482, page 41379 – 41380), paragraph numbers 7–8 are corrected by substituting the following paragraphs:

In 1950, human remains representing a minimum of seven individuals were removed from the English Camp Site (45–SJ–24) in San Juan County, WA, during a University of Washington summer field school directed by Professor Adan Treganza of San Francisco State University. The human remains and associated funerary objects were transferred to the Burke Museum and accessioned by the National Park Service. No known individuals were identified. The 23 associated funerary objects are 1 broken chipped stone projectile point and 22 non-human bone fragments.

In 1970, 1971, and 1972, human remains representing a minimum of eight individuals were removed from the English Camp Site in San Juan County, WA, during University of Idaho field schools directed by Dr. Roderick Sprague. The human remains and associated funerary objects were transferred to the Burke Museum and accessioned by the National Park Service. No known individuals were identified. The 58 associated funerary objects are 1 splinter awl made from deer bone, 1 tip of an antler tine, 1 square nail fragment, 1 wood fragment, 1 Horse Clam shell fragment, 6 basalt flakes, and 47 non-human skeletal fragments and non-human teeth.

Paragraph number 10 is corrected by substituting the following paragraph:

In 1951, human remains representing a minimum of seven individuals were removed from the North Garrison Bay Site (45–SJ–25) in San Juan County, WA, during a summer field school in archeology under the direction of Professor Carroll Burroughs of the University of Washington. The North Garrison Bay Site is a prehistoric village site north of both the Guss Island Site and English Camp Site referred to previously. The fragmentary human remains were transferred to the Burke Museum and accessioned by the

National Park Service. No known individuals were identified. The 11 associated funerary objects are 1 shell fragment, 1 fused non-human radius and ulna, 1 deer ulna, 1 carnivore mandible fragment, 1 non-human rib fragment, 2 non-human bone fragments, and 4 lots of organic matter.

Paragraph number 13 is corrected by substituting the following paragraph:

Officials of San Juan Island National Historical Park have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 34 individuals of Native American ancestry. Officials of San Juan Island National Historical Park also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 130 associated funerary objects 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 San Juan Island National Historical Park 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 Lummi Tribe of the Lummi Reservation, Washington.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated 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 October 3, 2008. Repatriation of the human remains and associated 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: August 11, 2008

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–20400 Filed 9–2–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0043 and 1029–0112

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request renewed approval for the collections of information for 30 CFR 772, Requirements for coal exploration; and 30 CFR 800, Bond and insurance requirements for surface coal mining and reclamation operations under regulatory programs.

DATES: Comments on the proposed information collection activities must be received by November 3, 2008, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 202–SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmre.gov*.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact John Trelease, at (202) 208–2783 or via e-mail at the address listed above.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8 (d)]. This notice identifies information collections that OSM will be submitting to OMB for approval. These collections are contained in (1) 30 CFR 772, Requirements for coal exploration; and (2) 30 CFR 800, Bond and insurance requirements for surface coal mining and reclamation operations under regulatory programs. OSM will request a 3-year term of approval for each information collection activity.

Comments are Invited On: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

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.

The following information is provided for the information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: 30 CFR 772—Requirements for coal exploration.

OMB Control Number: 1029–0112.

Summary: OSM and State regulatory authorities use the information collected under 30 CFR Part 772 to maintain knowledge of coal exploration activities, evaluate the need for an exploration permit, and ensure that exploration activities comply with the environmental protection and reclamation requirements of 30 CFR Parts 772 and 815 and section 512 of SMCRA (30 U.S.C. 1262)

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Persons planning to conduct coal exploration and State regulatory authorities.

Total Annual Responses: 905.

Total Annual Burden Hours: 8,218.

Title: 30 CFR 800—Bond and insurance requirements for surface coal mining and reclamation operations under regulatory programs.

OMB Control Number: 1029–0043.

Summary: The regulations at 30 CFR Part 800 primarily implement § 509 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act), which requires that persons planning to conduct surface coal mining operations first post a performance bond to guarantee fulfillment of all reclamation obligations under the approved permit. The regulations also establish bond release requirements and

procedures consistent with § 519 of the Act, liability insurance requirements pursuant to § 507(f) of the Act, and procedures for bond forfeiture should the permittee default on reclamation obligations.

Bureau Form Number: None.

Frequency Collection: On Occasion.

Description of Respondents: Surface coal mining and reclamation permittees and State regulatory authorities.

Total Annual Responses: 14,175.

Total Annual Burden Hours: 133,364 hours.

Total Annual Non-wage costs: $2,123,454.

Dated: August 27, 2008.

John R. Craynon,

Chief, Division of Regulatory Support.

[FR Doc. E8–20379 Filed 9–2–08; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0111

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request renewed approval for the collection of information for 30 CFR 761, Areas designated by Act of Congress.

DATES: Comments on the proposed information collection activities must be received by November 3, 2008, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 202–SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmre.gov*.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, contact John Trelease, at (202) 208–2783 or via e-mail at the address listed above.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. This notice identifies an information collection that OSM will be submitting to OMB for approval. This collection is contained in 30 CFR 761, Areas designated by Act of Congress. OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

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.

The following information is provided for the information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: Areas designated by Act of Congress, 30 CFR Part 761.

OMB Control Number: 1029–0111.

Summary: OSM and State regulatory authorities use the information collected under 30 CFR Part 761 to ensure that persons planning to conduct surface coal mining operations on the lands protected by § 522(e) of the Surface Mining Control and Reclamation Act of 1977 have the right to do so under one of the exemptions or waivers provided by this section of the Act.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Applicants for certain surface coal mine permits and State regulatory authorities.

Total Annual Respondents: 16 coal mining applicants and 24 state regulatory authorities.

Total Annual Burden Hours: 512.

Total Annual Non-Wage Costs: $2,508.

Dated: August 25, 2008.

John R. Craynon,

Chief, Division of Regulatory Support.

[FR Doc. E8–20381 Filed 9–2–08; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–654]

In the Matter of: Certain Peripheral Devices and Components Thereof and Products Containing the Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 30, 2008, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Microsoft Corporation of Redmond, Washington. A supplement to the complaint was filed on August 19, 2008. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain peripheral devices and components thereof and products containing the same that infringe certain claims of U.S. Patent Nos. 6,460,094; 6,795,949; 5,414,445; 7,199,785; 7,187,358; 7,068,257; and 6,531,692. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist order.

ADDRESSES: The complaint and supplement, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Stephen Smith, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2746.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2008).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on August 26, 2008, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain peripheral devices or components thereof or products containing the same that infringe one or more of claims 1, 2, 27, 33, 34, and 59 of U.S. Patent No. 6,460,094; claims 1 and 3 of U.S. Patent No. 6,795,949; claims 16, 17, 19, 21–23, 25–28, and 32 of U.S. Patent No. 5,414,445; claims 18–20 of U.S. Patent No. 7,199,785; claims 1–12, 17, 18, and 21–23 of U.S. Patent No. 7,187,358; claims 5, 6, 11, 13–15, 23, and 26–28 of U.S. Patent No. 7,068,257; and claims 1, 7, 14, 18, 19, 34, and 36 of U.S. Patent No. 6,531,692, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Microsoft Corporation, 1 Microsoft Way, Redmond, Washington 98052.

(b) The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the complaint is to be served: Primax Electronics Ltd., No. 669, Ruey Kung Road, Neihu Taipei, Taiwan.

(c) The Commission investigative attorney, party to this investigation, is Stephen Smith, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401D, Washington, DC 20436; and

(3) For the investigation so instituted, Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: August 27, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–20337 Filed 9–2–08; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0013]

Office on Violence Against Women; Agency Information Collection Activities: Revision of a Currently Approved Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Semi-Annual Progress Report for the Rural Domestic Violence, Dating Violence, Sexual Assault, Stalking, and Child Abuse Enforcement Assistance Grant Program.

The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 73, page 40375 on April 10, 2008 allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment October 3, 2008. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grantees of the Rural Domestic Violence, Dating Violence, Sexual Assault, Stalking, and Child Abuse Enforcement Assistance Grant Program.

(3) Agency form number, if any, and the applicable component of the

Department of Justice sponsoring the collection: *Form Number:* 1122–0013. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 165 grantees of the Rural Program. The primary purpose of the Rural Program is to enhance the safety of victims of domestic violence, dating violence, sexual assault, stalking, and child victimization by supporting projects uniquely designed to address and prevent these crimes in rural jurisdictions. Grantees include States, Indian tribes, local governments, and nonprofit, public or private entities, including tribal nonprofit organizations, to carry out programs serving rural areas or rural communities.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: It is estimated that it will take the approximately 165 respondents (Rural Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A Rural Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) An estimate of the total public burden (in hours) associated with the collection: The total annual hour burden to complete the data collection forms is 330 hours, that is 165 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: August 27, 2008.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E8–20377 Filed 9–2–08; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Henkemeyer* (D. Minn.), Civil Action No. 0:08–cv–05030–PJS–RLE, was lodged with the United States District Court for the District of Minnesota on August 27, 2008.

This proposed Consent Decree concerns a complaint filed by the United States against Gerome G. Henkemeyer, Henkemeyer Landfill, Inc., and Riley Bros. Construction, Inc. (collectively ''the Defendants'') pursuant to section 309(b) and (d) of the Clean Water Act (''CWA''), 33 U.S.C. 1319(b) and (d), to obtain injunctive relief from and impose civil penalties against the Defendants for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The proposed Consent Decree resolves these allegations by requiring the Defendants to restore the impacted areas, perform mitigation, and pay civil penalties.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Friedrich A.P. Siekert, Office of the United States Attorney for the District of Minnesota, 600 United States Courthouse, 300 South Fourth Street, Minneapolis, MN 55415, and refer to *United States* v. *Henkemeyer* (D. Minn.), DJ #90–5–1–1–17415.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the District of Minnesota, 202 United States Courthouse, 300 South Fourth Street, Minneapolis, MN 55415. In addition, the proposed Consent Decree may be viewed at *http://www.usdoj.gov/enrd/Consent_Decrees.html*.

Cherie Rogers,

Assistant Section Chief, Environmental Defense Section, Environment & Natural Resources Division.

[FR Doc. E8–20258 Filed 9–2–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–11396, D–11424, D–11459 & D–11467]

Proposed Exemptions Involving *D–11396—Popular, Inc.; D–11424—Fidelity Brokerage Services, LLC; D–11459—Calpine Corporation and D–11467—Merritts Antiques, Inc. Employees Pension Plan*

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *moffitt.betty@dol.gov*, or by FAX to (202) 219–0204 by the end of the scheduled comment period. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to

comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemption was requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The application contains representations with regard to the proposed exemption which is summarized below. Interested persons are referred to the application on file with the Department for a complete statement of the facts and representations.

Popular, Inc.,
Banco Popular de Puerto Rico, and
Popular Financial Holdings, Inc.
(collectively, the Applicants)
Located in the Commonwealth of Puerto Rico
[Exemption Application No. D–11396]

Proposed Exemption

The Department of Labor is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986 (the U.S. Code) and in accordance with procedures set forth in 29 CFR Part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

Section I: Transactions

If the proposed exemption is granted:

(a) The restrictions of sections 406(a), 406(b)(1), 406(b)(2), and 407(a) of the Act shall not apply, effective November 23, 2005, to:

(1) The acquisition of stock rights (the Rights) by certain plans, described, below, in Section I(a)(1)(A) through (D) of this proposed exemption, in connection with an offering of such Rights (the Offering) by Popular, Inc. (Popular), a party in interest with respect to such plans:

(A) Popular, Inc. Retirement Savings Plan for Puerto Rico Subsidiaries (the Popular PR Plan);

(B) Banco Popular de Puerto Rico Savings and Stock Plan (the BPPR Savings Plan),

(C) Popular, Inc. U.S.A. Profit Sharing/401(k) Plan (the Popular USA Plan) [1],

(D) Popular Financial Holdings, Inc. Savings and Retirement Plan (the PFH Savings Plan), and

(2) The holding of the Rights by the certain plans, described, above, in Section I(a)(1)(A) through (D) of this proposed exemption, until the expiration of such Rights; provided that the conditions in Section II of this proposed exemption, as set forth below, are satisfied, and

(b) The sanctions resulting from the application of section 4975 of the U.S. Code, by reason of section 4975(c)(1)(A) through (E) shall not apply, effective November 23, 2005, to the acquisition of the Rights by certain plans, described, above, in Section I(a)(1)(C), and Section I(a)(1)(D) of this proposed exemption; [2] provided that the conditions in Section II of this proposed exemption, as set forth below, are satisfied.

Section II: Conditions

The relief proposed, herein, is conditioned upon adherence to the material facts and representations described herein and as set forth in the application file and upon compliance with the conditions, as set forth in this proposed exemption.

a. The receipt by each of the Participant Directed Plans of the Rights occurred in connection with the Offering made available by Popular on the same terms to all shareholders of the common stock of Popular (the Popular Stock);

b. The acquisition of the Rights by the Participant Directed Plans resulted from an independent act of Popular as a corporate entity, and all holders of the Rights, including the Participant Directed Plans, were treated in the same manner with respect to the acquisition of the Rights;

c. All shareholders of the Popular Stock, including the Participant Directed Plans received the same proportionate number of Rights based on the number of shares of Popular Stock held by such Participant Directed Plans;

d. The acquisition of the Rights by the Participant Directed Plans was made pursuant to provisions of each such plan for individually-directed investment of participant accounts (the Account(s));

e. All decisions regarding the Rights made by the Participant Directed Plans were made in accordance with the provisions of each such plan for individually-directed investment of participant Accounts, by the individual participants whose Accounts in each such plan received the Rights in connection with the Offering; and

f. Popular must refund to the Banco Popular de Puerto Rico Profit Sharing Plan and the Banco Popular de Puerto Rico Profit Restoration Plan (collectively, the P/S Plans), and to the Accounts of each of the participants in the Participant Directed Plans, the *pro rata* portion of a dealer manager/solicitation fee (the Fee) in the aggregate amount of $81,261.34. This Fee was received by Popular Securities, Inc., the co-dealer/manager of the Rights Offering, as a result of the exercise of the Rights by each such plan and by each such Account, and the payment by each such plan and each such Account of the subscription price of $21.00 per share for the Popular Stock. Furthermore, Popular must refund to each such plan and to each such Account an additional amount attributable to lost earnings experienced by each such plan and each such Account on the *pro rata* portion of such Fee, and interest on such lost earnings, for the period from December 19, 2005, to the date when Popular has refunded the *pro rata* portion of the Fee attributable to each such plan and each such Account, the lost earnings amount, plus interest on such lost earnings. For the purpose of calculating the lost earnings on the *pro rata* portion of the Fee attributable to each such plan and each such Account, plus interest, on such lost earnings, Popular will use the Online Calculator for the Voluntary Fiduciary Correction Program [3] that appears on the Web site of the Employee Benefits Security Administration.

EFFECTIVE DATE: This proposed exemption, if granted, will be effective as of November 23, 2005, the date of the announcement of the Offering.

Summary of Facts and Representations (SFR)

1. Popular is a corporation organized under the laws of the Commonwealth of Puerto Rico. Popular is a diversified,

[1] The BPPR Savings Plan, the Popular PR Plan, the Popular USA Plan, and the PFH Savings Plan are referred to, herein, collectively, as the Participant Directed Plans.

[2] The Applicants represent that, because the fiduciaries for the BPPR Savings Plan, and the Popular PR Plan have not made an election under section 1022(i)(2) of the Act, whereby such plans would be treated as a trust created and organized in the United States for purposes of tax qualification under section 401(a) of the U.S. Code, that jurisdiction under Title II of the Act does not apply. Accordingly, the Department is not providing any relief for the prohibitions, as set forth in Title II of the Act, for the acquisition of the Rights by these plans.

[3] 70 FR 17516, April 6, 2005.

publicly owned bank holding company, registered under the Bank Holding Company Act of 1956, as amended, and, accordingly, is subject to the supervision and regulation of the Board of Governors of the Federal Reserve System. Popular is a full service financial services provider with operations in Puerto Rico, the United States, the Caribbean, and Latin America. As of September 30, 2005, Popular had consolidated total assets of $47.1 billion, total deposits of $22.6 billion, and stockholders' equity of $3.2 billion.

Principal subsidiaries of Popular include: (a) Popular Securities, Inc., a securities broker-dealer; (b) Popular International Bank, an international banking entity; (c) EVERTEC, Inc., a provider of electronic transaction, processing, and programming services; and (d) Banco Popular de Puerto Rico (BPPR), a banking subsidiary of Popular.

2. BPPR is a corporation which was organized under the laws of the Commonwealth of Puerto Rico in 1893. BPPR, the largest bank in Puerto Rico, offers retail and commercial banking services. As of September 30, 2005, BPPR had total assets of $25.4 billion, deposits of $14.2 billion, and stockholders' equity of $1.6 billion.

3. Popular Financial Holdings, Inc. (PFH) is a corporation organized under the laws of Delaware and is an indirect subsidiary of Popular. PFH is engaged in consumer lending services. As of September 30, 2005, PFH had total assets of $8.6 billion.

4. Popular sponsors two (2) of the Participant Directed Plans involved in the transactions for which an exemption has been requested. These two plans are described, as follows:

(a) The Popular PR Plan

The Popular PR Plan is a defined contribution profit sharing plan which includes a qualified cash or deferred arrangement intended to meet the requirements of Section 1165(e) of the Puerto Rico Internal Revenue Code of 1994, as amended (the PR Code). The Popular PR Plan was established for the exclusive benefit of the eligible employees and beneficiaries of Puerto Rican subsidiaries of affiliates of Popular. The Popular PR Plan is not intended to meet, and has never in practice met, the requirements of Section 401(a) of the U.S. Code. The Popular PR Plan is subject to Title I of the Act.

The Popular PR Plan, allows participants to direct investments of their own contributions and employer contributions into several investment alternatives, including Popular Stock.

The Popular PR Plan is funded through a trust. The trustee of the Popular PR Plan is BPPR. The Popular Puerto Rico Subsidiaries Benefits Committee (the PR Benefits Committee), a committee appointed by Popular, is the Plan Administrator of the Popular PR Plan.

As of November 7, 2005, (the Record Date), the Popular PR Plan had approximately 3,000 participants and total assets of $102,281,000. As of the Record Date, the shares of Popular Stock held by the Popular PR Plan were valued at $56,542,469 and comprised approximately fifty-five percent (55%) of the total assets of the Popular PR Plan. These shares represented approximately one percent (1%) of the total shares of Popular Stock outstanding as of the Record Date.

Effective as of January 1, 2006, the Popular PR Plan changed its name to the Popular, Inc. Puerto Rico Savings and Investment Plan.

(b) The Popular USA Plan

The Popular USA Plan is a defined contribution profit sharing plan which includes a qualified cash or deferred arrangement intended to meet the requirements of Section 401(k) of the U.S. Code. The Popular USA Plan was adopted for the exclusive benefit of employees and their beneficiaries of Popular's indirect subsidiary, Banco Popular North America (BPNA), and certain of its affiliates. The Popular USA Plan is not intended to meet the requirements of Section 1165(a) of the PR Code. The Popular USA Plan is subject to Title I and Title II of the Act.

The Popular USA Plan allows participants to direct investments of their own contributions and a portion of the employer contributions into several investment alternatives, including Popular Stock. The employer bonus matching contributions are invested in Popular Stock.

The Popular USA Plan is funded through a trust of which BPNA is the trustee. The Popular USA Benefits Committee, a committee appointed by Popular, is the Plan Administrator of the Popular USA Plan.

As of the Record Date, the Popular USA Plan had approximately 2,400 participants and total assets of $59,700,000. The shares of Popular Stock held by the Popular USA Plan were valued at $31,748,657, as of the Record Date, and comprised approximately fifty-three percent (53%) of the total assets in the Popular USA Plan. These shares represented less than one percent (<1%) of the total shares of Popular Stock outstanding as of that date.

Effective as of April 1, 2006, the Popular USA Plan changed its name to Popular, Inc. USA 401(k) Savings and Investment Plan.

5. BPPR sponsors one (1) of the Participant Directed Plans involved in the transactions for which an exemption has been requested. The BPPR Savings Plan is a profit sharing plan with a qualified cash or deferred arrangement intended to meet the requirements of Section 1165(e) of the PR Code covering employees of BPPR who are residents of Puerto Rico. This plan is not intended to meet, and has never in practice met, the requirements of Section 401(a) of the U.S. Code. This plan is subject to Title I of the Act.

The BPPR Savings Plan allows participants to direct investments of their own contributions into several investment alternatives, including Popular Stock. All employer contributions are invested in Popular Stock.

The BPPR Savings Plan is funded through a trust. BPPR is the trustee. BPPR also acts as custodian of this plan's assets, holding legal title to such assets. The PR Benefits Committee is the Plan Administrator of the BPPR Savings Plan.

As of the Record Date, the BPPR Savings Plan had approximately 7,050 participants and total assets of $68,794,200. As of the Record Date, the shares of Popular Stock held by this plan were valued at $65,569,487 and comprised approximately ninety-five percent (95%) of the total assets in such plan. These shares represented 1.2 percent (1.2%) of the total shares of Popular Stock outstanding as of that date.

Effective as of July 1, 2006, the BPPR Savings Plan merged with and into the Popular PR Plan which on January 1, 2006, had changed its name to the Popular, Inc. Puerto Rico Savings and Investment Plan, as discussed above in paragraph 4(a) of the SFR of this proposed exemption.

6. PFH sponsors one (1) of the Participant Directed Plans, which is involved in the transactions for which an exemption has been requested. The PFH Savings Plan is a defined contribution plan which includes a qualified cash or deferred arrangement intended to meet the requirements of Section 401(k) of the U.S. Code. The PFH Savings Plan was adopted for the exclusive benefit of the employees and their beneficiaries of PFH and its subsidiaries. The PFH Savings Plan is not intended to meet the requirements of Section 1165(a) of the PR Code. The PFH Savings Plan is subject to Title I and Title II of the Act.

The PFH Savings Plan allows participants to direct investments of their own contributions and employer contributions into several investment alternatives, including Popular Stock.

The PFH Savings Plan is funded through two trusts of which Banker's Trust and Delaware Charter Guarantee & Trust Company d/b/a Principal Trust Company serve as the trustees. PFH is the Plan Administrator of the PFH Savings Plan.

As of the record date, the PFH Savings Plan had approximately 2,000 participants and total assets of $35,200,000. As of the same date, the shares of Popular Stock held by the PFH Savings Plan were valued at $2,793,982 and comprised approximately eight percent (8%) of the total assets of the PFH Savings Plan. These shares represented less than one percent (<1%) of the total shares of Popular Stock outstanding as of that date.

Effective as of April 1, 2006, the PFH Plan merged with and into the Popular USA Plan, which had changed its name on the same date to the Popular, Inc. USA 401(k) Savings and Investment Plan, described in paragraph (4)(b), above, of the SFR of this proposed exemption.

7. On November 23, 2005, Popular announced an offering of up to 10,500,000 shares of Popular Stock to shareholders of record of such stock, as of the close of business on the Record Date, November 7, 2005, pursuant to the grant of Rights to such shareholders to acquire Popular Stock. Shareholders did not have to pay any amount to receive such Rights. As of the Record date, Popular had 10,856 shareholders of record. As of the Record Date, there were 267,427,050 shares of Popular Stock outstanding.

The authorized capital stock of Popular consists of 470 million shares of common stock, with a par value $6.00 per share, and 30 million shares of preferred stock, without a par value per share. The Popular Stock is traded on the NASDAQ Stock Market under the symbol of BPOP. It is represented that the last reported sale price of the Popular Stock on November 22, 2005, before the Offering was $22.59 per share.

The Rights were non-transferable and were not evidenced by certificates. No fractional Rights were issued. The number of Rights granted to each shareholder was rounded up to the next whole number. There was no market for the Rights.

For each twenty-six (26) shares of Popular Stock held, each shareholder received one (1) right to acquire one (1) share of Popular Stock. Each shareholder was entitled to subscribe for all or any portion of the Popular Stock underlying each shareholder's Rights. Each shareholder who subscribed for the full number of shares of Popular Stock received an oversubscription right to subscribe for additional shares of Popular Stock that were not otherwise subscribed for by other shareholders. It is represented that if insufficient shares of the Popular Stock were available to satisfy fully all elections, the available shares were prorated among those who elected to exercise the oversubscription rights. In November 2005, it was anticipated that all or a portion of the Popular Stock not subscribed for in the Rights Offering would be offered to the public through an underwritten public offering. However, it is represented that all of the Popular Stock available for purchase through exercise of the Rights were subscribed for by the holders of such Rights.

Even though holders of the Rights could exercise the Rights at any time between November 23, 2005, and December 19, 2005, the exercise of the Rights was effective as of December 19, 2005. After December 19, 2005, the Rights expired with no value.

To exercise the Rights, shareholders had to return a Subscription Rights Order Form to Mellon Bank, N.A., the subscription agent, along with payment in full by either a cashier's check or official check of the initial subscription price of $21.00 per share (the Initial Subscription Price), as determined by the Board of Directors of Popular. It is represented that as a public offering did not occur within thirty (30) calendar days after the end of the Rights Offering, the actual subscription price was the *lesser of*: (i) the Initial Subscription Price, or (ii) the average closing price at 4 p.m., New York City time, of Popular Stock for the five (5) trading days up to and including the expiration date of the Rights offering on December 19, 2005. The closing prices for the Popular Stock for the five (5) trading days, December 13, 14, 15, 16, 19, 2005, respectively, were $21.60; $21.69; $21.52; $21.32; and $21.13 per share. The average closing price was $21.45 per share. It is represented that if the actual subscription price were lower than the Initial Subscription Price, the difference would be refunded, without interest, to the shareholder.

Shareholders that held Popular Stock through the book entry system of the Depository Trust Company received credit for the Popular Stock purchased through the exercise of the Rights on December 29, 2005. Shareholders holding physical certificates received delivery of the Popular Stock purchased through the exercise of the Rights during January 2006. The Popular Stock acquired upon exercise of the Rights did not have any restriction on transferability.

In connection with the subscription Offering, UBS Securities LLC (UBS) and Popular Securities, Inc. (Popular Securities), an affiliate of Popular, acting as dealer managers, received a Fee in connection with solicitation services equal to 2.5% of the aggregate subscription price per share for shares issued pursuant to the Offering.[4] It is represented that UBS and Popular Securities split such Fee on a fifty/fifty basis. In addition, Popular reimbursed the dealer managers up to $25,000 for expenses incurred in connection with the Offering.

As a condition of this exemption, Popular must refund to the P/S Plans and to the Accounts of each of the participants in the Participant Directed Plans, the *pro rata* portion of the Fee, a dealer manager/solicitation fee, in the aggregate amount of $81,261.34. This Fee was received by Popular Securities, Inc., the co-dealer/manager of the Rights Offering, as a result of the exercise of the Rights by each such plan and by each such Account, and the payment by each such plan and each such Account of the subscription price of $21.00 per share for the Popular Stock. Furthermore, Popular must refund to each such plan and to each such Account an additional amount attributable to lost earnings experienced by each such plan and each such Account on the *pro rata* portion of such Fee, and interest on such lost earnings, for the period from December 19, 2005, to the date when Popular has refunded the *pro rata* portion of the Fee attributable to each such plan and each such Account, the lost earnings amount, plus interest on such lost earnings. For the purpose of calculating the lost earnings on the *pro rata* portion of the Fee attributable to each such plan and each such Account, plus interest, on such lost earnings, Popular will use the Online Calculator for the Voluntary Fiduciary Correction Program[5] that appears on the Web site of the Employee Benefit Security Administration.

In addition, the Applicants have represented that in the future, Popular, BPPR, and PFH will request a prohibited transaction exemption from the Department prior to entering into any transaction in which a fee will be paid to an affiliate of Popular, BPPR,

[4] The Department, herein, is not providing any relief for the receipt of any fees by Popular or any of its affiliates.

[5] 70 FR 17516, April 6, 2005.

and/or PFH by any plan sponsored by Popular, BPPR, and/or PFH.

8. Each of the Applicants, as employers any of whose employees are covered by one or more of the Participant Directed Plans, subject to Title I of the Act, and as fiduciaries of one or more of the Participant Directed Plans, are parties in interest with respect to each such plan, pursuant to section 3(14)(C) and section 3(14)(A) of the Act, respectively. In addition, the Applicants, as employers any of whose employees are covered by one or more of the Participant Directed Plans, which are subject to Title II of the Act, and as fiduciaries with respect to one or more of such Participant Directed Plans are disqualified persons with respect to each such plan, pursuant to section 4975(e)(2)(C) and section 4975(e)(2)(A) of the U.S. Code, respectively. Further, Popular as the owner of BPPR and the indirect owner of PFH is a party in interest, pursuant to section 3(14)(E) of the Act and a disqualified person, pursuant to section 4975(e)(2)(E) of the U.S. Code, with respect to the Participant Directed Plans.

9. The Popular Stock and the Rights satisfy the definition of ''employer securities,'' as set forth under section 407(d)(1) of the Act.[6] The Popular Stock satisfies the definition of a ''qualifying employer security,'' as set forth in section 407(d)(5) of the Act.'' However, the Rights do not satisfy the definition of ''qualifying employer securities,'' as defined under section 407(d)(5) of the Act.[7] Under section 407(a)(1) of the Act, a plan may not acquire or hold any ''employer security'' which is not a ''qualifying employer security.'' Further, section 406(a)(1)(E) of the Act prohibits the acquisition, on behalf of a plan, of any ''employer security'' in violation of section 407(a) of the Act. Further, section 406(a)(2) of the Act prohibits a fiduciary who has authority or discretion to control or manage the assets of a plan to permit the plan to hold any ''employer security'' that violates section 407(a) of the Act.

The Applicants have requested retroactive relief, from the prohibitions, as set forth in Title I of the Act, for the acquisition and holding of the Rights by the Participant Directed Plans.

The Applicants have also requested retroactive relief from the prohibitions, as set forth in section 4975(c)(1)(A) through (E) of the U.S. Code, for the acquisition of the Rights by the Popular USA Plan and the PFH Saving Plan.

10. With regard to the Rights acquired by the Participant Directed Plans, it is represented by plan design that the participants of the Participant Directed Plans controlled the assets in their Accounts in such plans and that no plan fiduciary had the authority to exercise any control over such assets. Therefore, upon receipt of the Rights by the Participant Directed Plans, the Rights were allocated to the Accounts of the participants in such plans in proportion to the Popular Stock beneficially owned by each such Account. In addition, it is represented that each participant in the Participant Directed Plans was given the opportunity to exercise the Rights. Accordingly, each participant was able to make an independent decision whether to liquidate his or her Account assets to purchase additional shares of Popular Stock.[8]

All shareholders, including the participants in the Participant Directed Plans, could exercise the Rights through the close of business (4 p.m., San Juan, Puerto Rico time) on December 19, 2005. This deadline for exercising the Rights was implemented by Popular as the issuer of the Rights. Neither the shareholders nor the participants in the Participant Directed Plans had any voice in setting the deadline with respect to the Rights.

On December 19, 2005, the necessary funds for the exercise of the Rights were transferred by the trustees to the subscription agent for the purchase of the Popular Stock. Upon receipt of the new shares, the newly received shares were allocated to the Account of each participant in the respective plan.

11. Under the Rights Offering, shareholders were entitled to subscribe to purchase additional shares of Popular Stock up to the number of shares that were not purchased by the other shareholders (the Oversubscription Privilege). In order to participate in the Oversubscription Privilege, every Right issued on every share of Popular Stock held in the Participant Directed Plans would have had to have been exercised. Because this did not occur, the Oversubscription Privilege was not available to the Participant Directed Plans.

12. It is represented that the acquisition and holding of the Rights by the Participant Directed Plans, pursuant to the Offering, was in the interests of and beneficial to such plans and to the participants and beneficiaries of such plans. In this regard, the Participant Directed Plans were given an opportunity to purchase additional shares of the Popular Stock at a discount from the market price.

13. It is represented that the acquisition and holding of the Rights by the Participant Directed Plans was protective of such plans and of the participants and beneficiaries of such plans in that all of the shareholders of Popular Stock, including the Participant Directed Plans, were treated in a similar manner with respect to the Rights.

14. It is represented that the acquisition and holding of the Rights by the Participant Directed Plans was feasible, in that the Offering was a one-time transaction, and all shareholders of the Popular Stock, including the Participant Directed Plans, were treated in the same manner with respect to the acquisition and holding of the Rights. With regard to the fact that the subject transactions were consummated prior to obtaining an exemption due to the timing of the Rights Offering, it is represented that the fiduciaries were required to engage in the Rights Offering before requesting the proposed exemption, because such fiduciaries had no control over the timing of the transactions.

Popular will bear all costs of the exemption application, and of the notification of interested persons.

15. In summary, the Applicants represent that the proposed transactions satisfy the statutory requirements for an exemption under section 408(a) of the Act and section 4975(c)(2) of the U.S. Code because:

a. The receipt by each of the Participant Directed Plans of the Rights occurred in connection with the Offering made available by Popular on the same terms to all shareholders of the Popular Stock;

b. The acquisition of the Rights by the Participant Directed Plans resulted from an independent act of Popular as a corporate entity, and all holders of the Rights, including the Participant Directed Plans, were treated in the same manner with respect to the acquisition of the Rights;

[6] Section 407((d)(1) of the Act defines the term, ''employer security,'' as ''a security issued by an employer of employees covered by the plan, or by an affiliate of such employer.''

[7] Section 407(d)(5) of the Act defines the term, ''qualifying employer security,'' as an employer security which is stock, a marketable obligation (as defined in subsection (e)), or an interest in a publicly traded partnership.

[8] The Applicants initially requested an administrative exemption from the prohibitions, as set forth in Title I and Title II of the Act, as applicable, for the exercise of the Rights by the Participant Directed Plans and the P/S Plans. Subsequently, the Applicants withdrew the request for such administrative exemption and represented that they would rely on the relief provided by the statutory exemption, pursuant to section 408(e) of the Act for such transactions. The Department is offering no view, as to whether the Applicants have satisfied the requirements of the statutory exemption provided in section 408(e) of the Act. Further, the Department, herein, is not providing any relief with respect to the exercise of the Rights by the Participant Directed Plans and the P/S Plans.

c. All shareholders of the Popular Stock, including the Participant Directed Plans, received the same proportionate number of Rights;

d. All decisions regarding the acquisition and holding of the Rights by the Participant Directed Plans were made in accordance with the provisions of each such plan for individually directed investment of participant Accounts, by the individual participants whose Accounts in each such plan received the Rights in connection with the Offering; and

e. Popular will refund to the P/S Plans and to the Accounts of each of the participants in the Participant Directed Plans, the *pro rata* portion of the Fee in the aggregate mount of $81,261.34 received by Popular Securities, Inc., as a result of the exercise of the Rights by each such plan and by each such Account, and the payment by each such plan and each such Account of the subscription price of $21.00 per share for the Popular Stock. Furthermore, Popular will refund to each such plan and to each such Account an additional amount attributable to lost earnings experienced by each such plan and each such Account on the *pro rata* portion of such Fee, and interest on such lost earnings, for the period from December 19, 2005, to the date when Popular has refunded the *pro rata* portion of the Fee attributable to each such plan and each such Account, the lost earnings amount, plus interest on such lost earnings.

Notice To Interested Persons

Those persons who may be interested (the Interested Persons) in the publication in the **Federal Register** of the Notice of Proposed Exemption (the Notice) include:

(1) All participants in the Participant Directed Plans at the time of the transactions for which relief is proposed (including former employees with vested account balances in those plans);

(2) all retirees and beneficiaries currently receiving benefits from the Participant Directed Plans;

(3) all employers with employees who participated in the Participant Directed Plans at the time of the transactions for which relief is proposed; and

(4) all the fiduciaries of the Participant Directed Plans.

It is represented that notification will be provided to all such Interested Persons by first-class mail, within fifteen (15) calendar days of publication of the Notice in the **Federal Register**. Such mailing will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the supplemental statement (the Supplemental Statement), as required, pursuant to 29 CFR 2570.43(b)(2), which will advise all Interested Persons of their right to comment and to request a hearing.

The Department must receive all written comments and requests for a hearing no later than thirty (30) days from the last date of the mailing of copies of the Notice and copies of the Supplemental Statement to all Interested Persons.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 693–8540 (This is not a toll-free number).

Fidelity Brokerage Services, LLC (FBS), Fidelity Management Corporation (together Fidelity) Located Boston, Massachusetts [Application No. D–11424]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990.)

Section I: Covered Transactions

Effective (the date the final exemption is published in the **Federal Register**), the restrictions of sections 406(a)(1)(D) and 406(b) of ERISA, and the sanctions resulting from the application of section 4975 of the Code, including the loss of exemption of an individual retirement account or annuity pursuant to section 408(e)(2)(A) of the Code, of a Coverdell education savings account pursuant to section 530(d) of the Code, of a Archer medical savings account pursuant to section 220(e)(2) of the Code, or of a health savings account pursuant to section 223(e)(2) of the Code, by reason of section 4975(c)(1)(D), (E), and (F) of the Code, shall not apply to the receipt of an Applicable Benefit by an individual for whose benefit a Covered Plan is established or maintained, or by his or her Family Members, with respect to a Tiered Product, pursuant to an arrangement offered by Fidelity under which the Account Value of the Covered Plan is taken into account for purposes of determining eligibility to receive such Applicable Benefit, provided that each condition of Section II of this exemption is satisfied.

Section II: Conditions

(a) The Covered Plan whose Account Value is taken into account for purposes of determining eligibility to receive the Applicable Benefit under the arrangement is established and maintained for the exclusive benefit of the participant covered under the Covered Plan, his or her spouse, or their beneficiaries.

(b) The Applicable Benefit with respect to the Tiered Product must be of the type that Fidelity itself could offer consistent with all applicable federal and state banking laws and all applicable federal and state laws regulating broker-dealers.

(c) The Applicable Benefit with respect to the Tiered Product must be provided by Fidelity or its affiliate in the ordinary course of its business as a bank or broker-dealer to customers of Fidelity who qualify for such arrangement, but who do not maintain Covered Plans with Fidelity or its affiliate.

(d) For purposes of determining eligibility to receive the Applicable Benefit, the Account Value required by Fidelity for the Covered Plan is as favorable as any such requirement based on the value of any type of account used by Fidelity to determine eligibility to receive the Applicable Benefit.

(e) The rate of interest paid with respect to any assets of the Covered Plan invested in a Tiered Interest Product is reasonable.

(f) The combined total of all fees for the provision of services to the Covered Plan is not in excess of reasonable compensation within the meaning of section 4975(d)(2) of the Code and section 408(b)(2) of ERISA.

(g) The investment performance of the Covered Plan's investment(s) is no less favorable than the investment performance of an identical investment(s) that could have been made at the same time by a customer of Fidelity who is not eligible for (or who does not receive) any Applicable Benefit.

(h) The Applicable Benefits offered with respect to any Tiered Product under the arrangement to a Covered Plan customer must be the same as is offered by Fidelity with respect to such Tiered Product to non-Covered Plan customers of Fidelity having the same aggregate Account Value.

(i) If the Covered Plan is established at a broker-dealer or bank that is unrelated to Fidelity, the assets of the Covered Plan must be custodied with Fidelity and at the time the Covered Plan is established, disclosures must be made to the owner of the Covered Plan specifying that under the arrangement, services are being provided by Fidelity to the Covered Plan.

III. Definitions

(a) The term ''Fidelity'' means Fidelity Brokerage Services LLC (FBS) or any of its affiliates. An ''affiliate'' of Fidelity Brokerage Services LLC

includes any person directly or indirectly controlling, controlled by, or under common control with FBS. The term control means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(b) The term ''Covered Plan'' means a plan sponsored by Fidelity or a plan with respect to which Fidelity maintains custody of its assets, and is an Individual Retirement Plan or other savings account described in section III(c), or a Keogh Plan described in section III(d).

(c) The term ''Individual Retirement Plan'' means an individual retirement account (''IRA'') described in Code section 408(a), an individual retirement annuity described in Code section 408(b), a Coverdell education savings account described in section 530 of the Code, an Archer MSA described in section 220(d) of the Code, or a health savings account described in section 223(d) of the Code. For purposes of this exemption, the term Individual Retirement Plan shall not include an Individual Retirement Plan which is an employee benefit plan covered by Title I of ERISA, except for a Simplified Employee Pension (SEP) described in section 408(k) of the Code or a Simple Retirement Account described in section 408(p) of the Code which provides participants with the unrestricted authority to transfer their balances to IRAs or Simple Retirement Accounts sponsored by different financial institutions.

(d) The term ''Keogh Plan'' means a pension, profit-sharing or stock bonus plan qualified under Code section 401(a) and exempt from taxation under Code section 501(a) under which some or all of the participants are employees described in section 401(c) of the Code. For purposes of this exemption, the term Keogh Plan shall not include a Keogh Plan which is an employee benefit plan covered by Title I of ERISA.

(e) The term ''Account Value'' means the dollar value of investments in cash or securities held in the account for which market quotations are readily available. For purposes of this exemption, the term ''cash'' shall include (without limitation) savings accounts that are federally-insured and deposits as that term is defined in section 29 CFR Section 2550.408b–4(c)(3). The term ''Account Value'' shall not include investments in securities that are offered by Fidelity exclusively to Covered Plans.

(f) The term ''Tiered Product'' means an arrangement that is a ''Tiered Interest Product'' or a ''Tiered Loan Product.''

(g) The term ''Tiered Interest Product'' means a bank deposit, an arrangement for payment of interest on free cash held in a brokerage account, or any other arrangement under which assets in an individual's account that is eligible for the arrangement (including Covered Plans) are invested, and with respect to which interest is paid at a specified rate based on the aggregate amount of the accounts maintained with Fidelity by an individual and by his or her Family Members that are eligible to be taken into account for purposes of the arrangement, including the Account Value of the Covered Plans.

(h) The term ''Tiered Loan Product'' means any arrangement for the extension of credit to an individual, with respect to which the interest and/or Loan Expenses required to be paid are reduced to a specified rate or amount based on the aggregate amount of the accounts and other financial relationships of the individual (and his or her Family Members) eligible to be taken into account for purposes of the arrangement, including the Account Value of the Covered Plans.

(i) The term ''Loan Expenses'' means application fees, points, attorneys' fees, appraisal fees, title insurance, and any other fees or costs that an individual is required to pay in connection with the origination or maintenance of an extension of credit pursuant to a Tiered Loan Product.

(j) The term ''Applicable Benefit'' means: (i) in the case of a Tiered Interest Product, an increase in the interest paid on an account established or maintained by an individual or any of his or her Family Members (including, in either case, through a Covered Plan); and (ii) in the case of a Tiered Loan Product, a reduction in the interest and/or Loan Expenses that an individual or any of his or her Family Members is required to pay.

(k) The term ''Family Members'' means beneficiaries of an individual for whose benefit the Covered Plan is established or maintained who would be members of the family as that term is defined in Code Section 4975(e)(6), or a brother, a sister, or spouse of a brother or sister.

EFFECTIVE DATE: If granted, this exemption will be effective as of (the date of publication of the final exemption in the **Federal Register**).

Summary of Facts and Representations

1. FBS is a limited liability company with its principal office located in Boston, Massachusetts. FBS is wholly owned by FMR Corp. which is the parent company of the group of entities that together constitute Fidelity Investments (FBS and its affiliates are collectively referred to as Fidelity.) Fidelity is a financial services company that provides investment management, custody, brokerage, and other services to a wide variety of individuals and entities, including IRAs and other accounts and plans subject to Section 4975 of the Code and/or ERISA. Fidelity has approximately $1.7 million trillion assets under administration.

2. PTE 93–33 as amended (64 FR 11044, March 8, 1999), provides relief from the restrictions of sections 406(a)(1)(D) and 406(b) of ERISA and the sanctions resulting from the application of sections 4975(a) and (b), 4975(c)(3) and 408(e)(2) of the Code by reason of section 4975(c)(1)(D), (E) and (F) of the Code, and permits the receipt of services at reduced or no cost by an individual for whose benefit an IRA or Keogh Plan is established or maintained or by members of his or her family, from a bank pursuant to an arrangement in which the account balance of the IRA or Keogh Plan is taken into account for purposes of determining eligibility to receive such services, provided the conditions of the exemption are met. PTE 93–33 permitted banks to count IRAs and Keogh Plan established and maintained at the bank to determine a customer's eligibility to receive reduced or not cost services. Under PTE 93–33, as amended, banks are permitted to offer its customers only those services that may be offered by banks under applicable federal and state banking laws.[9] In the case where the service is offered by an affiliate of the bank, the service must be of the type that the bank itself could offer customers.

PTE 97–11 as amended, (67 FR 76425, December 12, 2002) permits the receipt of services at reduced or no cost by an individual for whose benefit an IRA or Keogh Plan is established or maintained or by members of his or her family, from a broker-dealer registered under the Securities Exchange Act of 1934 pursuant to an arrangement in which the account value of, or the fees incurred for services provided to, the IRA or Keogh Plan is/are taken into account for purposes of determining eligibility to receive such services,

[9] In the notice of proposed exemption for PTE 93–2 (PTE 93–33 subsequently amended PTE 93–2) the following examples of relationship banking services were listed: free checking services, discounted safe deposit box rents, or free loan closing costs. (52 FR 8365 (February 28, 1992)). In addition, the Department notes that a bank may offer other services or benefits to customers as part of its relationship banking program. For example, under PTE 93–33 a bank may offer its relationship banking customers a higher interest rate on their investments, provided the conditions of the exemption are met.

provided that certain conditions are met. Under PTE 97–11 relief is provided from the restrictions of sections 406(a)(1)(D) and 406(b) of ERISA and the sanctions resulting from the application of sections 4975(a) and (b), 4975(c)(3) and 408(e)(2) of the Code by reason of section 4975(c)(1)(D), (E) and (F) of the Code. PTE 97–11 limits the services that may be offered by broker-dealers under a relationship brokerage program to those services that the broker-dealer itself may offer consistent with federal and state laws regulating broker-dealers.[10] Furthermore, in those cases where the services are provided by an affiliate of the broker-dealer, the service must the type that the broker-dealer itself could offer customers.

3. Fidelity seeks an exemption that would allow the balance in a customer's Covered Plan to be taken into account in setting the interest rate earned on deposits or other similar investments of that person and family members. Similarly, the requested exemption would allow such person's Covered Plan balance to be taken into account in setting the interest or expenses to be charged on a loan to such person or any of the eligible relatives. The applicant represents that the exemption is necessary and appropriate because if the exemption is granted, Covered Plans would be able to receive favorable interest rates or reductions in borrowing costs based on the total amount that an individual and certain members of his or her family have in various relationships with FBS and its affiliates.

These arrangements are similar to those contemplated in PTEs 93–33 and 97–11. However, Fidelity does not believe that the arrangement described in its application falls within the relief provided by PTEs 93–33 or 97–11 because its arrangement involves the payment of enhanced rates of interest on deposits or the charging of reduced rates of interest on loans would constitute ''the receipt of services at reduced or no cost'' within the meaning of the class exemptions.[11] In addition, Fidelity requests exemptive relief to permit plans that are outside the term ''IRA'' as defined in PTEs 93–33 and 97–11, to engage in the covered transactions.

4. The transaction covered by the proposed exemption would apply to a plan sponsored by Fidelity or a plan to which Fidelity maintains custody of its assets, and is an IRA or other savings account as described in section III(c) of the exemption, or a Keogh Plan described in section III(d) of the exemption. Under section III(c) of the exemption, the term IRA or other savings account is defined as IRAs described in section 408(a) of the Code, Individual Retirement Annuities described in section 408(b) of the Code, Archer Medical Savings Accounts described in section 220(d) of the Code, health savings accounts described in section 223(d) of the Code, Coverdell education savings account described in section 530 of the Code. However, the relief provided by the exemption, if granted, does not apply to an IRA that is an employee benefit plan that is covered by Title I of ERISA except for those IRAs that are part of a Simplified Employee Pension (SEP) described in section 408(k) of the Code or a Simple Retirement Account described in section 408(p) of the Code which provides participants with the unrestricted authority to transfer their balances to IRAs or Simple Retirement Accounts sponsored by different financial institutions.

Under section III(d), the term Keogh means a pension, profit-sharing or stock bonus plan qualified under Code section 401(a) and exempt from taxation under Code section 501(a) under which some or all of the participants are employees described in section 401(c) of the Code. The relief provided by the exemption, if granted, does not apply to a Keogh Plan which is an employee benefit plan covered by Title I of ERISA.

Fidelity proposes to take into account the Account Value of the assets of Covered Plans of a customer or Family Members in calculating a customer's eligibility to receive Tiered Interest Products. In addition to situations in which the customer establishes the Covered Plan with Fidelity, Fidelity requests that the exemption permit Fidelity to take into account the Account Value of a Covered Plan that is established with an unrelated bank or broker-dealer, and is custodied with Fidelity. For example, an individual may establish an IRA with a broker-dealer that is unaffiliated with Fidelity under an arrangement which specifies that Fidelity will act as clearing broker for the account and will have custody of assets of the IRA. In such a case, the IRA and IRA owner may not be in privity of contract with Fidelity, but, under its agreement with the unaffiliated broker-dealer, Fidelity would be providing services to the IRA. Fidelity represents that disclosures provided to the IRA owner made by the unaffiliated broker would clearly specify the arrangement that services are being provided by Fidelity. Further, Fidelity's records would identify each such IRA and indicate that such brokerage and custodial services are being performed for the benefit of such IRA. Fidelity states there would be a significant relationship between Fidelity and the IRA. Such arrangements would operate under the exemption as arrangements involving those Covered Plans that are established directly with Fidelity.

5. According to Fidelity, offering tiered interest rate arrangements to customers who have a variety of relationships with a financial institution, have become a standard practice. Under a tiered interest rate arrangement, the total amount of all of the relationships that the individual and his or her eligible family members have with the financial institution is determined, and the rate of interest paid with respect to the individual's investment in any specified interest-bearing product (*e.g.*, a CD or other deposit, or a free credit balance arrangement) will increase, at certain breakpoints, based on that total amount. The relationships taken into account in determining that total amount may include, for example, trust, custody, or brokerage accounts with the institution, loans borrowed from the institution, or bank deposits with the institution.

Fidelity offers the following example of a tiered arrangement: (a) If the total amount of the relationships that an individual and his or her eligible family members have with the financial institution is less than $100,000, the interest rate paid on amounts held in one of those accounts and invested in a specific type of CD may be 2.5%; (b) if the total amount is at least $100,000 but less than $250,000, the interest rate may be 3.0%; (c) if the total amount is at least $250,000 but less than $1 million, the interest rate may be 3.5%; and (d)

[10] In the notice of proposed exemption for PTE 97–11 (61 FR 39996 (July 31, 1996), the following examples of relationship brokerage services were listed: financial planning services, direct deposit/debit and automatic fund transfer privileges, enhanced account statements, toll-free access to client service center, check writing privileges, debit/credit cards, special newsletter and reduced brokerage and asset management fees. In addition, the Department notes that a broker-dealer may offer its customers additional services and benefits as part of its relationship brokerage program. For example, under PTE 97–11, a broker-dealer may offer its relationship brokerage customers a higher interest rate on their investments, provided the conditions of the exemption are met.

[11] In this regard, both of the Class Exemptions define the term ''service'' to include incidental products of a de minimus value which are directly related to the provision of services covered by the exemption. It is noted that in footnote 26 of the Summary of Facts and Representations related to a recently proposed exemption sought by Citigroup, Inc. (Application No. D–11417, 72 FR 207, p 60905 (Oct. 26, 2007)), the Department indicated that offering a higher interest rate on investments and other benefits could fall within the Class Exemptions. Fidelity does not believe it can reasonably rely on this notation and requests this exemption.

if the total amount is $1 million or greater, the interest rate may be 4.0%.

6. Fidelity states that tiered interest rate arrangements have become prevalent in, *e.g.*, savings, money market, and checking vehicles because they provide substantial benefits to both the financial institutions that offer them and the individuals who take advantage of them. From the perspective of the financial institution, tiered interest rate arrangements allow the business to offer incentives to individuals to consolidate assets at that institution and to reward an individual for making that decision. From the perspective of the customer, the institution can reward the individual as the relationship grows. Amounts held in a variety of accounts may earn more favorable rates of interest through investment in the tiered interest products than would be earned if the individual's accounts were spread among various financial institutions. If these tiered arrangements are extended to Covered Plan, the assets of the Covered Plans would benefit from favorable rates of interests.

For example, an IRA owner may lock in an interest rate over a specified period by investing amounts held in the IRA in a certificate of deposit, or idle cash held in a brokerage account may earn interest under a free credit balance arrangement with the broker. Obtaining a favorable interest rate in any situation where an account is invested in an interest-bearing arrangement will help to maximize the overall return on the assets held or maintained in the account.

7. Fidelity proposes to offer Tiered Interest Products to certain eligible accounts, held in the name of customers (and Family Members), with respect to which management, advisory, custody, brokerage, or other services are provided by Fidelity. The interest rates to be paid, based upon the applicable breakpoints, would be established for each Tiered Interest Product based on the nature of the product, regulatory requirements applicable to that particular Tiered Interest Product, and relevant market considerations.

8. In addition, Fidelity proposes to offer customers tiered arrangements under which the costs of borrowing are reduced in connection with the relationships the borrower and his or her eligible family members have with Fidelity. Under such an arrangement, the aggregate amount the borrower and his or her Family Members have in relationships (*i.e.*, assets maintained with Fidelity) with Fidelity is determined, and the interest rate and/or Loan Expenses charged with respect to the loan will be decreased, at certain breakpoints, based on that total amount.

9. If the exemption is granted, Fidelity would be able to consider account balances of Covered Plans in determining a customer's eligibility to receive: (i) an increased rate of interest with respect to a Tiered Interest Product, and to other eligible accounts held or maintained in the name of the customer (or the name of his or her Family Members); or (ii) a reduction in the interest rate or Loan Expenses charged to a customer (or one of his or her Family Members) under a Tiered Loan Product.

10. In summary, and for the reasons stated in the Application, Fidelity represents the transactions will satisfy statutory criteria of Section 4975(c)(2) of the Code and Section 408(a) of ERISA since, among other things:

(a) The Covered Plan whose Account Value is taken into account for purposes of determining eligibility to receive the Applicable Benefit under the arrangement will be established and maintained for the exclusive benefit of the participant covered under the Covered Plan, his or her spouse, or their beneficiaries.

(b) The Applicable Benefit with respect to the Tiered Product will be of the type that Fidelity could offer consistent with all applicable federal and state banking laws and all applicable federal and state laws regulating broker-dealers.

(c) The Applicable Benefit with respect to the Tiered Product will be provided by Fidelity or its affiliate in the ordinary course of business as a bank or broker-dealer to customers of Fidelity who qualify for such arrangement but who do not maintain Covered Plans with Fidelity or its affiliate.

(d) For purposes of determining eligibility to receive the Applicable Benefit, the Account Value of the Covered Plan required by Fidelity will be as favorable any requirement based on the value of any type of account used by Fidelity to determine eligibility to receive the Applicable Benefit.

(e) The rate of interest paid with respect to any assets of the Covered Plan invested in a Tiered Interest Product will be reasonable.

(f) The combined total of all fees for the provision of services to the Covered Plan will not be in excess of reasonable compensation within the meaning of section 4975 (d)(2) of the Code and 408(b)(2) of ERISA.

(g) The investment performance of the Covered Plan's investment(s) will be no less favorable than the investment performance of an identical investment(s) that could have been made at the same time by a customer of Fidelity who is not eligible for (or who does not receive) any Applicable Benefit.

(h) The Applicable Benefits offered with respect to any Tiered Product under the arrangement to a Covered Plan customer will be the same as is offered with respect to such Tiered Product to non-Covered Plan customers having the same aggregate Account Value.

(i) When the Covered Plan is established at a broker-dealer or bank that is unrelated to Fidelity, the assets of the Covered Plan will be custodied with Fidelity, and at the time the Covered Plan is established, disclosures will be made to the owner of the Covered Plan specifying that under the arrangement, services will be provided by Fidelity to the Covered Plan.

Notice to Interested Persons

The applicant represents that because those potentially interested persons cannot all be identified at the time this proposed exemption is published in the **Federal Register**, the only practical means of notifying the public is by publication of the notice of pendency in the **Federal Register**. Therefore, written comments and/or requests for a public hearing must be received by the Department not later than 45 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Allison Padams-Lavigne, U.S. Department of Labor, telephone (202) 693–8564. (This is not a toll-free number.)

Calpine Corporation Located in Houston, TX [Application No. D–11459]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, effective January 31, 2008, the restrictions of section 406(a), 406(b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the past acquisition by the Calpine Corporation Retirement Savings Plan (the Plan) of warrants (the Warrants) issued by the Calpine Corporation (the Applicant) that would permit, under certain conditions, the purchase of shares of newly-issued

Calpine Common Stock (the New Stock) pursuant to certain bankruptcy proceedings; (2) the holding of the Warrants by the Plan; and the (3) disposition of the Warrants. This proposed exemption is subject to the following conditions:

(a) The acquisition and holding of the Warrants by the Plan occurred in connection with the Applicant's bankruptcy proceedings pursuant to which all holders of Calpine Common Stock prior to January 31, 2008 (the Old Stock) were treated in the same manner;

(b) The Plan had little, if any, ability to affect the negotiation of the Applicant's Plan of Reorganization pursuant to Chapter 11 of the United States Bankruptcy Code;

(c) The Plan acquired the Warrants automatically and without any action on the part of the Plan;

(d) The Plan did not pay any fees or commissions in connection with the acquisition and holding of the Warrants;

(e) All decisions regarding the holding and disposition of the Warrants by the Plan were made in accordance with Plan provisions for individually directed investment of participant accounts by the individual participants whose accounts in the Plan received the Warrants; and

(f) The Plan received the same proportionate number of Warrants as other owners of Old Stock.

Summary of Facts and Representations

1. The Plan is a defined contribution plan that provides for participant-directed investments. As of December 31, 2007, the Plan had total assets of approximately $162,756,131 and 2,906 participants. Fidelity Management Trust and Company (Fidelity) is the current trustee as well as custodian for the Warrants.

2. The Applicant is a Delaware corporation with its principal place of business in Houston, Texas. The Applicant generates and sells electricity and electricity-related products.

3. On December 20, 2005, the Applicant filed for relief under Chapter 11 of the Bankruptcy Code. On December 19, 2007, the U.S. Bankruptcy Court for the Southern District of New York approved and confirmed the Debtors' Sixth Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code (POR). The Applicant represents that during the bankruptcy proceedings, the Plan had little ability to affect the outcome of the proceedings. Under the POR, the Old Stock [12] was Calpine's common stock which traded prior to January 31, 2008. Pursuant to the POR, the Old Stock was cancelled on January 31, 2008 and delisted on February 4, 2008. Pursuant to the POR, holders of the Old Stock received Warrants on January 31, 2008 which would, under certain conditions, permit the holders of the Old Stock to purchase the New Stock.

4. The Plan received 210,000 Warrants automatically which represent .4% of the total Warrants that were issued. Each Warrant entitles the holder to purchase one share of the New Stock. The Warrant holders have the ability to purchase up to ten percent (10%) of the Applicant's New Stock. The Warrants expire on August 25, 2008. On June 10, 2008, the price of a Warrant was $0.78. As of June 10, 2008, the price of the New Stock was $22.59. The Warrant exercise price for each share of the New Stock is $23.88. No fractional shares will be issued and no cash in lieu of fractional Warrants will be distributed.

5. The Applicant represents that it has analyzed the prohibited transaction implications under the Act concerning the acquisition, holding and disposition of the Warrants by the Plan under the POR. The Applicant, accordingly, has concluded that the acquisition and holding of the Warrants by the Plan may have resulted in transactions in violation of section 406 of the Act and section 4975 of the Code.

6. On December 4, 2005, the Applicant retained U.S. Trust to serve as an independent fiduciary with respect to the Old Stock and the Warrant fund under the Plan. It is represented that U.S. Trust also serves as the investment manager for the Warrants and for any New Stock that may be acquired upon exercise of the Warrants. Accordingly, U.S. Trust has the authority to dispose of the Warrants if it determines it is obligated to do so under the Act. In the event that the Warrants are in the money immediately prior to the expiration of the Warrants, U.S. Trust, as the independent fiduciary of the Warrant fund, has the obligation to sell any Warrants that have not been exercised by the Plan participants. Moreover, U.S. Trust has the power to restrict Plan participants from exercising the Warrants if the New Stock market price is less than the Warrant strike price. However, the Applicant represents that U.S. Trust has no authority to exercise the Warrants and that only Plan participants will have that authority.[13]

8. The Warrants are not listed on an exchange; however, an Over-the-Counter Market for the Warrants currently exists based on bid and ask prices listed on an electronic quotation service known as the ''Pink Sheets.'' The Applicant represents that any Warrants sold at the request of a Plan participant will be sold on the Over-the-Counter Market.

9. In summary, the Applicant represents that the transactions satisfy the statutory criteria for an exemption under Section 408(a) of the Act for the following reasons: (a) All holders of the Old Stock have been treated in the same manner with respect to the acquisition and holding of the Warrants pursuant to the Applicant's bankruptcy proceeding; (b) The Plan was unable to influence the bankruptcy proceedings; (c) The Plan acquired the Warrants automatically and without any action on the part of the Plan; (d) The Plan did not pay any fees or commissions in connection with the acquisition and holding of the Warrants; (e) Plan participants had the authority to make decisions regarding the disposition of the Warrants in accordance with the terms of the Plan. All decisions regarding the holding and disposition of the Warrants by the Plan were made in accordance with Plan provisions for individually directed investment of participant accounts by the individual participants whose accounts in the Plan received the Warrants; and The Plan received the same proportionate number of Warrants as other owners of Old Stock.

FOR FURTHER INFORMATION CONTACT: Mr. Anh-Viet Ly, Department of Labor, telephone number (202) 693–8648. (This is not a toll-free number).

Merritts Antiques, Inc. Employees Pension Plan (the Plan) Located in Douglasville, Pennsylvania [Application No. D–11467]

[12] The Old Stock traded on the Over-the-Counter Market with the ticker symbol of ''CPNLQ US.'' As of November 2, 2007, there were 482,200,000 shares outstanding of the Old Stock. The 52-week high was $3.38 on August 8, 2007 and the 52-week low was $.12 on February 2, 2008.

[13] The Applicant initially requested administrative relief for the exercise of the Warrants by Plan participants. Subsequently, the Applicant withdrew its request for administrative relief and, instead, is relying on the statutory exemption pursuant to section 408(e) of the Act to provide relief to Plan participants for the exercise of the Warrants. The Department is offering no view as to whether the exercise of the Warrants by Plan participants satisfies the conditions of section 408(e) of the Act.
have been treated in a similar manner. Plan participants were not charged a fee or commission to acquire or hold the Warrants. The Applicant represents that the Warrants are transferable. The Applicant represents that the commission rate charged by Fidelity to Plan participants for trades or for the exercise of the Warrants was 2.9 cents per Warrant.

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the prospective cash sale (the Sale) by the Plan of improved real property located at 1172 Old Swede Road, Amity Township, Berks County, PA (the 1172 Property) to Merritts Antiques, Inc. (the Employer), a party in interest with respect to the Plan, provided that:

(a) On the date of the cash sale of the 1172 Property by Plan to the Employer, the Plan receives an amount for the 1172 Property equal to the greater of:

(1) $180,000;

(2) The fair market value as determined by an independent, qualified appraiser, as of the date of such Sale; or

(3) The total costs to the Plan during its ownership which would include acquisition and holding costs minus all income received.

(b) The Plan incurs no fees, commissions, or other charges or expenses as a result of its participation in the Sale.

(c) The Sale is a one-time transaction for cash.

Summary of Facts and Representations

1. On March 28, 1969, the Employer adopted the Plan which is a defined benefit plan. On March 31, 2007 there were 33 Participants in the Plan and the Plan had total net assets of $2,638,170. National Penn Investors Trust Company serves as the Trustee. The Employer filed a Form 5310 (Application for Determination for Terminating Plan) with the IRS on or about September 20, 2007. On May 28, 2008, the IRS issued a favorable determination letter allowing the Plan to terminate.

2. The Employer, a corporation located in Douglasville, PA, engages in the antiques business. As an employer whose employees are covered by the Plan, the Employer is a party in interest with respect to the Plan pursuant to section 3(14)(C) of the Act.

3. On June 10, 1994, the Plan acquired a parcel of improved real property located at 1168 Old Swede Road, Amity Township, Berks County, PA (the 1168 Property) for $59,000.00 from an unrelated party. Beginning on September 1, 1998, Anna Mae Shelton, an employee of the Employer, and Kenneth Shelton (the Sheltons) leased the first floor unit of the 1168 Property for $575 per month from the Plan.[14] From May 15, 2003 until June 30, 2006, the Sheltons paid $600 per month and from July 1, 2006 until June 30, 2007, they paid $625.00 to the Plan per month. Subsequent to July 1, 2007, the Sheltons paid the Plan $650.00 per month. On April 30, 2008, the Plan sold the 1168 Property to an unrelated third party purchaser for $160,000.

4. On June 7, 1991, the Plan acquired the 1172 Property for $125,000.00 from an unrelated party. Penny and Steve Lauer (the Lauers) originally leased the 1172 Property from the Plan for $550 per month beginning in August 1991. Beginning on October 23, 2006, tenant Penny Lauer became employed by the Employer.[15] The Employer represents that Penny Lauer is not a highly-compensated employee. When the Lauers moved out of the 1172 Property on February 28, 2007, the lease payments had increased to $650.00 per month. Penny Lauer remains employed by the Employer. During the duration of its ownership of the 1172 Property, the Plan incurred holding costs (taxes, maintenance and insurance) of $63,671.48 and received gross rental income of $115,800. The total cost to the Plan for acquisition and holding of the 1172 Property after subtracting gross rental income is $72,871.48 ($125,000 plus $63,671.48 minus $115,800).

5. On February 8, 2007, an appraiser Douglas A. Haring, MAI, SRA (the Appraiser), reviewed the Plan's leases for the 1168 and 1172 Properties. It is represented that the Appraiser is qualified based on the fact the Appraiser has been a Society of Real Estate Appraiser member since April 28, 1980, a Pennsylvania Certified General Appraiser since October 25, 1991 and a Member of the Appraisal Institute since October 25, 2001. The Appraiser represents that he is independent because he received less than one percent of his income in 2006 and 2007 from the Plan and the Employer combined.

The Appraiser determined the rent received by the Plan from the Sheltons for the 1168 Property represented fair market rental value. The Appraiser also determined the rent received by the Plan from the Lauers' for the 1172 Property represented fair market rental value. The Appraiser's opinion is based on comparable rental data based on a number of similar rental units located in Berks County, PA.

6. The Employer requests an exemption for the proposed sale of 1172 Property to the Employer. On November 20, 2007, the Appraiser appraised the value of the 1172 Property at $180,000.00 using a sales comparison approach.

7. In summary, the Employer represents that the proposed transaction, in which the Plan is selling real property in order to make distributions as part of the Plan's termination, satisfies the statutory criteria for an exemption under section 408(a) of the Act because:

a. On the date of the Sale, the Plan receives an amount for the 1172 Property equal to the greater of: (i) $180,000; (ii) the fair market value of the 1172 Property as determined by an independent, qualified appraiser, as of the date of such Sale; or (iii) the cost to the Plan to acquire and hold the 1172 Property;

b. The Plan pays no fees, commissions, charges or expenses in connection to the Sale; and

c. The Sale is a one-time cash transaction.

FOR FURTHER INFORMATION CONTACT: Mr. Anh-Viet Ly of the Department, telephone 202–693–8648. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the

[14] The Department is not proposing any relief for the lease by the Plan to the Sheltons.

[15] The Department is not proposing any relief for the lease by the Plan to the Lauers.

exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 27th day of August, 2008.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. E8–20277 Filed 9–2–08; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,317]

Union Carbide Corporation a Subsidiary of the Dow Chemical Company, West Virginia Operations, South Charleston Technology Park, South Charleston, WV; Notice of Affirmative Determination Regarding Application for Reconsideration

On August 21, 2008, the Department of Labor (Department) received a request for administrative reconsideration of the Department's negative determination regarding eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) applicable to workers and former workers of the subject firm.

The negative ATAA determination was issued on July 18, 2008, and the Department's Notice of determination was published in the **Federal Register** on July 30, 2008 (73 FR 44283). The subject workers are engaged in activities (research and development) related to the production of various chemicals.

The negative ATAA determination was based on the Department's findings during the initial investigation that conditions within the workers' industry are not adverse.

In the request for reconsideration, workers alleged that ''employment in the chemical industry for the state of West Virginia and our workers' region (Kanawha County) is adverse.'' The request included employment statistics for the chemical industry in Kanawha County (West Virginia) and for West Virginia.

The Department has carefully reviewed the request for reconsideration and has determined that the Department will conduct further investigation.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 26th day of August 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–20348 Filed 9–2–08; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,271]

Horton Automatics a Subsidiary of Overhead Door Corporation Including On-Site Leased Workers From Remedy Staffing Corpus Christi, TX; 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 June 12, 2008, applicable to workers of Horton Automatics, including on-site leased workers from Remedy Staffing, Corpus Christi, Texas. The notice was published in the **Federal Register** on June 27, 2008 (73 FR 36575).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the subassembly of parts for automatic windows and doors.

New information shows that Horton Automatics is a subsidiary of Overhead Door Corporation and that some of the workers wages at the subject firm are being reported under the Unemployment Insurance (UI) tax account for Overhead Door Corporation.

Accordingly, the Department is amending this certification to include workers of the subject firm whose UI wages are reported under the parent firm, Overhead Door Corporation.

The amended notice applicable to TA–W–63,271 is hereby issued as follows:

''Workers engaged in the subassembly of parts at Horton Automatics, a subsidiary of Overhead Door Corporation, including on-site leased workers from Remedy Staffing, Corpus Christi, Texas, who became totally or partially separated from employment on or after April 10, 2007, through June 12, 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 25th day of August 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–20347 Filed 9–2–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,191]

Kurdziel Iron of Rothbury, Inc., Currently Known as Carlton Creek Ironworks, LLC, Including On-Site Leased Workers of Employment Giant Formerly Known as Select Employment, Rothbury, MI; 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 November 1, 2007, applicable to workers of Kurdziel Iron of Rothbury, Inc., including on-site leased workers of Employment Giant, formerly known as Select Employment, Rothbury, Michigan. The notice was published in the **Federal Register** on November 15, 2007 (72 FR 64246).

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 iron foundry counterweights and machine bases.

New information shows that on July 11, 2008, Monomoy Capital Partners purchased the assets of Kurdziel Iron of Rothbury, Inc. and is currently known as Carlton Creek Ironworks, LLC, Rothbury, Michigan. Workers wages at the subject firm are being reported under the Unemployment Insurance (UI) tax account for Carlton Creek Ironworks, LLC.

Accordingly, the Department is amending this certification to include workers of the subject firm whose UI wages are reported under the successor firm, Carlton Creek Ironworks, LLC, Rothbury, Michigan.

The amended notice applicable to TA-W–62,191 is hereby issued as follows:

All workers of Kurdziel Iron of Rothbury, Inc., currently known as Carlton Creek Ironworks, LLC, including on-site leased workers from Employment Giant, formerly known as Select Employment, Rothbury, Michigan, who became totally or partially separated from employment on or after September 20, 2006, through November 1, 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 25th day of August 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–20345 Filed 9–2–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,584]

Nxstage Medical, Inc., Including On-Site Leased Workers From Microtech Staffing, Accountemps and JL Longo Staffing, LLC, Lawrence, MA; 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 3, 2008, applicable to workers of NxStage Medical, Inc., including on-site leased workers from Microtech Staffing and Accountemps, Lawrence, Massachusetts. The notice was published in the **Federal Register** on July 21, 2008 (73 FR 42370).

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 dialysis equipment and disposables.

New information shows that leased workers of JL Longo Staffing LLC were employed on-site at the Lawrence, Massachusetts location of NxStage Medical, Inc. 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 JL Longo Staffing LLC working on-site at the Lawrence, Massachusetts location of the subject firm.

The intent of the Department's certification is to include all workers employed at NxStage Medical, Inc. who were adversely affected by a shift in production of dialysis equipment and disposables to Mexico.

The amended notice applicable to TA–W–63,584 is hereby issued as follows:

All workers of NxStage Medical, Inc., including on-site leased workers from Microtech Staffing, Accountemps and JL Longo Staffing LLC, Lawrence, Massachusetts, who became totally or partially separated from employment on or after June 23, 2007, through July 3, 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 22nd day of August 2008.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–20349 Filed 9–2–08; 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 18 through August 22, 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–63,754; Lane Furniture Industries, Inc., Belden, MS: July 28, 2007

TA–W–63,755; Meadwestvaco, Consumer and Office Products Div., Sidney, NY: July 9, 2007

TA–W–63,779; Wee Ones, Inc., Louisiana, MO: July 30, 2007

TA–W–63,798; Intelicoat Technologies Image Products Holdco, LLC, South Hadley, MA: August 1, 2007

TA–W–63,342; Viking and Worthington Steel Enterprise, LLC, Valley City, OH: May 7, 2007

TA–W–63, 518; WRR, Inc., d/b/a State Plating, Elwood, IN: June 3, 2007

TA–W–63,613; Swaim, Inc., High Point, NC: June 9, 2007

TA–W–63,700; NewPage Corporation, Kimberly Mill, FKA Stora Enso North America, Kimberly, WI: July 7, 2007

TA–W–63,724; JIT Manufacturing, Inc., Westfield, MA: July 16, 2007

TA–W–63,731; Progressive Molded Products, Inc., McAllen, TX: July 22, 2007

TA–W–63,732; Allied Tube and Conduit, A Division of Tyco International, Pine Bluff, AR: July 22, 2007

TA–W–63,810; Specialty Shearing and Dyeing Inc., Greenville, SC: August 4, 2007

TA–W–63,526; St. John Knits, Sample Manufacturing Department, Irvine, CA: June 11, 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–63,751; Comau, Inc., Novi Industries Division, Novi, MI: July 23, 2007

TA–W– 63,791; Samco Scientific, Personnel Plus, San Fernando, CA: July 28, 2007

TA–W–63,815; Krack Corporation, A Division of Ingersoll Rand, Addison, IL: July 28, 2007

TA–W–63,851; Fechheimer-Marvin Manufacturing, Martin, TN: August 11, 2007

TA–W–63,872; AS America, Inc., d/b/a American Strandard Brands, Paintsville, KY: July 13, 2008

TA–W–63,767; Pride Manufacturing Co., LLC, Guilford, ME: July 28, 2007

TA–W–63,804; Oxford Industries, Inc., Tupelo, MS: August 4, 2007

TA–W–63,654A; P.I., Inc., PICM Division, Athens, TN: June 27, 2007

TA–W–63,654; P.I., Inc., Carvcraft Division, Athens, TN: June 27, 2007

TA–W–63,738; Mountain View Fabricating, Mountain View, MO: July 23, 2007

TA–W–63,747; Hynix Semiconductor Manufacturing America, Eugene, OR: July 24, 2007

TA–W–63,787; Bowne of Atlanta, Inc., Atlanta, GA: July 29, 2007

TA–W–63,795; Hasco America, Inc., Arden, NC: August 1, 2007

TA–W–63,797A; Avaya, Incorporated, A Subsidiary of Sierra Holding Corp., Lincroft, NJ: August 1, 2007

TA–W–63,797; Avaya, Inc., Basking Ridge, NJ: August 1, 2007

TA–W–63,807; RFMD, Quality Assurance Group, Greensboro, NC: July 31, 2007

TA–W–63,830; Robert Bosch Tool Corporation, Leased Workers of Bartlett Business Services, Lincolnton, NC: August 5, 2007

TA–W–63,901; Southern Motion, Inc., Cut and Sew Department, Pontotoc, MS: August 18, 2007

TA–W–63,610; RFMD, Packaging Operations, Greensboro, NC: June 24, 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– 63,801; Dakkota Integrated Systems, LLC, Kirkwood, MO: August 1, 2007

TA–W–63,554; Cranford Woodcarving, Inc., Hickory, NC: November 23, 2007

TA–W–63,680; Tower Automotive Operations, LLC, Clinton Business

Unit, Clinton Township, MI: July 11, 2007

TA–W–63,737; American & Efird, Inc., Nelson Plant 12, Mount Holly, NC: July 24, 2007

TA–W–63,792; Caraustar Mill Group,dba Chattanooga Paperboard, Chattanooga, TN: July 31, 2007

TA–W–63,879; Catawissa Lumber and Specialty Co.,West Jefferson Plant, West Jefferson, NC: August 14, 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–63,574; Albany International Research Company, Mansfield, MA

TA–W–63,671; Helsel Lumber Mill, Inc., Duncansville, PA

TA–W–63,706; Carolina Wholesale Neon, Inc., Mt. Airy, NC

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–63,709; RFMD, Transceiver Group, Employed at Scotts Valley, Greensboro, NC

TA–W–63,758; Lear Corporation, Quality Control & Inspection Dept., 950 Loma Verde, El Paso, TX

TA–W–63,813; Experian, Costa Mesa, CA

TA–W–63,847; Ramp Management, LLC, Fenton, MO

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 18 through August 22, 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 27, 2008.

Erin FitzGerald,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E8–20344 Filed 9–2–08; 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 15, 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 15, 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 27th day of August 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 8/18/08 and 8/22/08]

TA–W	Subject firm (Petitioners)	Location	Date of institution	Date of petition
63882	Kohler (UAW)	Searcy, AR	08/18/08	08/15/08
63883	Metaldyne (Wkrs)	Ridgway, PA	08/18/08	08/11/08
63884	Lan-Tex, Inc. (Comp)	Statesville, NC	08/18/08	08/15/08

APPENDIX—Continued

[TAA petitions instituted between 8/18/08 and 8/22/08]

TA–W	Subject firm (Petitioners)	Location	Date of institution	Date of petition
63885	Cochrane Furniture Company (Comp)	Lincolnton, NC	08/18/08	08/15/08
63886	Geo Specialty Chemicals (State)	Gibbsboro, NJ	08/18/08	08/15/08
63887	Sun Microsystems, Inc. (State)	Broomfield, CO	08/18/08	08/15/08
63888	JCIM (Wkrs)	Franklin, TN	08/18/08	08/07/08
63889	Harris Stratex (Wkrs)	San Jose, CA	08/18/08	08/05/08
63890	New Process Gear (Wkrs)	East Syracuse, NY	08/18/08	08/14/08
63891	Fluid Routing Solutions (UAW)	Detroit, MI	08/18/08	08/14/08
63892	Display Pack, Inc. (Wkrs)	Grand Rapids, MI	08/19/08	08/12/08
63893	Ingersoll-Rand/Harrow Products (State)	New Haven, CT	08/19/08	08/18/08
63894	Unicord International, LLC (State)	Guntown, MS	08/19/08	08/11/08
63895	Sewall Gear Manufacturing (State)	St. Paul, MN	08/19/08	08/18/08
63896	Neoconix (State)	Sunnyvale, CA	08/19/08	08/11/08
63897	IACNA (Comp)	Canton, OH	08/19/08	08/18/08
63898	Magna Services of America, Inc. (State)	Troy, MI	08/19/08	08/18/08
63899	Hughes Hardwood International, Inc. (Comp)	Collinwood, TN	08/19/08	08/18/08
63900	Berne Furniture Company (Wkrs)	Berne, IN	08/19/08	08/15/08
63901	Southern Motion, Inc. (Comp)	Pontotoc, MS	08/19/08	08/18/08
63902	Belden (Wkrs)	Richmond, IN	08/19/08	06/18/08
63903	Gramercy Jewelry Manufacturing Corp (Comp)	New York, NY	08/19/08	08/19/08
63904	Nestaway, LLC (UAW)	Cleveland, OH	08/20/08	08/19/08
63905	ConAgra Foods (Wkrs)	Omaha, NE	08/20/08	08/18/08
63906	Bel Power, Inc. (Comp)	Westboro, MA	08/20/08	08/19/08
63907	Rayloc (Wkrs)	Williamsport, MD	08/20/08	08/19/08
63908	Becker, Inc., Manufacturing (IAMAW)	Kenosha, WI	08/20/08	08/15/08
63909	Auxora, Inc. (State)	Baldwin Park, CA	08/20/08	07/24/08
63910	Magna Services of America, Inc. (Magna Int'l) (State)	Greenville, MI	08/20/08	08/18/08
63911	Cypress Semiconductor (Texas), Inc. (Comp)	Round Rock, TX	08/20/08	08/19/08
63912	Harley-Davidson Motor Co. (Wkrs)	York, PA	08/20/08	08/13/08
63913	Five Rivers Electronic Innovations, LLC (Comp)	Greeneville, TN	08/21/08	08/19/08
63914	Less Labor, Inc. (Comp)	Hopkinsville, KY	08/21/08	08/20/08
63915	Thermo King of Puerto Rico (State)	Arecibo, PR	08/21/08	08/13/08
63916	Walker Bay Boats (Comp)	Yakima, WA	08/21/08	08/19/08
63917	Materials Management, Inc. (Comp)	Easley, SC	08/22/08	08/21/08
63918	Atlantic Wire Company (State)	Branford, CT	08/22/08	08/21/08
63919	Varian, Inc. (Wkrs)	Walnut Creek, CA	08/22/08	08/21/08
63920	Sealy Mattress Company (Comp)	Clarion, PA	08/22/08	08/21/08
63921	Nobel Automative TN, LLC (Wkrs)	Paris, TN	08/22/08	08/15/08
63922	Kongsberg Automotive, Inc. (Comp)	Selmer, TN	08/22/08	08/21/08
63923	Vanguard Furniture (Comp)	Conover, NC	08/22/08	08/21/08

[FR Doc. E8–20343 Filed 9–2–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,235]

Southprint, Inc., Reidsville Division, Reidsville, NC; Notice of Negative Determination on Reconsideration

On July 31, 2008, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice was published in the **Federal Register** on August 7, 2008 (73 FR 46037).

The initial investigation resulted in a negative determination based on the finding that imports of screen-printing for apparel did not contribute importantly to worker separations at the subject firm and no shift of production to a foreign source occurred.

In the request for reconsideration the petitioner alleged that business at the subject firm declined because the subject firm's customers shifted screen-printing for apparel to foreign facilities. The petitioner provided an additional list of customers and alleged that these customers are importing screen-printing for apparel.

On reconsideration the Department of Labor surveyed these declining customers regarding their purchases of products like or directly competitive with screen-printing for apparel during 2006, 2007 and January through March, 2008 over the corresponding 2007 period. The survey revealed that the customers did not import products like or directly competitive with screen-printing for apparel during the relevant period.

The fact that the subject firm's customers are shifting their production abroad is not relevant to this investigation. According to section (a)(2)(B) of the Trade Act, in order to be eligible for TAA on the basis of a shift in production abroad, the shift in production must be implemented by the subject firm or its subdivision.

In this case, the subject firm did not import screen-printing for apparel nor was there a shift in production from subject firm abroad during the relevant period.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Southprint, Inc., Reidsville Division, Reidsville, North Carolina.

Signed at Washington, DC this 26th day of August, 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–20346 Filed 9–2–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,668]

R.D. Reeves Construction, Inc., Employed On-Site at Longview Timber, Longview, WA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 10, 2008, in response to a worker petition filed by an AFL–CIO official on behalf of workers of R.D. Reeves Construction, Inc. employed on-site at Longview Timber, Longview, Washington.

The petitioner is not an authorized representative of the group of workers covered by this petition, rendering this petition invalid. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 25th day of August 2008.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–20350 Filed 9–2–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,718]

Martinrea Heavy Stamping Division, Shelbyville, KY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 21, 2008 in response to a petition filed by a One-Stop office on behalf of workers of Martinrea, Heavy Stamping Division, Shelbyville, Kentucky.

The Department determined that the petitioner was not a One-Stop operator or partner but rather a former worker. A petition filed by workers must be completed and signed by three affected workers. Accordingly, the petition is deemed invalid and the investigation under this petition is terminated.

Signed at Washington, DC, this 21st day of August, 2008

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–20342 Filed 9–2–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of the ''*Local Area Unemployment Statistics (LAUS) Program.*'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before *November 3, 2008.*

ADDRESSES: Send comments to Carol Rowan, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, 202–691–7628. (This is not a toll free number.)

FOR FURTHER INFORMATION CONTACT: Carol Rowan, BLS Clearance Officer, 202–691–7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The BLS has been charged by Congress (29 U.S.C. 1 and 2) with the responsibility of collecting and publishing monthly information on employment, the average wage received, and the hours worked by area and industry. The process for developing residency-based employment and unemployment estimates is a cooperative Federal-State program which uses employment and unemployment inputs available in State Workforce Agencies.

The labor force estimates developed and issued in this program are used for economic analysis and as a tool in the implementation of Federal economic policy in such areas as employment and economic development under the Workforce Investment Act and the Public Works and Economic Development Act, among others.

The estimates also are used in economic analysis by public agencies and private industry, and for State and area funding allocations and eligibility determinations according to legal and administrative requirements. Implementation of current policy and legislative authorities could not be accomplished without collection of the data.

The reports and manual covered by this request are integral parts of the LAUS program insofar as they insure and/or measure the timeliness, quality, consistency, and adherence to program directions of the LAUS estimates and related research.

II. Current Action

Office of Management and Budget clearance is being sought for an extension of the information collection request that makes up the LAUS program. All aspects of the program are automated. All data are entered directly into BLS-provided systems.

The BLS, as part of its responsibility to develop concepts and methods by which States prepare estimates under the LAUS program, developed a manual for use by the States. The manual explains the conceptual framework for the State and area estimates of employment and unemployment, specifies the procedures to be used, provides input information, and discusses the theoretical and empirical basis for each procedure. This manual is updated on a regular schedule. The LAUS program implemented a major program redesign in January 2005. The Redesign was announced in the **Federal Register** on November 8, 2004.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Type of Review: Extension of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Local Area Unemployment Statistics (LAUS) Program.

OMB Number: 1220–0017.

Affected Public: State government.

	Total respondents	Frequency	Total responses	Average time per response (hours)	Estimated total burden (hours)
LAUS 3040	7277	13	94601	1.5	141902
LAUS 8	52	11	572	1	572
LAUS 15	52	.12	6	2	12
LAUS 16	52	1	52	1	52
Totals			95231		142538

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 27th day of August 2008.

Cathy Kazanowski,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. E8–20320 Filed 9–2–08; 8:45 am]

BILLING CODE 4510–24–P

MERIT SYSTEMS PROTECTION BOARD

Agency Information Collection Activities; Proposed Collection

AGENCY: Merit Systems Protection Board.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA, 44 U.S.C. 3501) the U.S. Merit Systems Protection Board (MSPB) has forwarded an information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval. This is a new information collection activity. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: On June 4, 2008 (**Federal Register**, Volume 73, Number 108, pages 31890–31891), MSPB sought public comments on this ICR pursuant to 5 CFR 1320.8(d). MSPB received no comments. MSPB is submitting an ICR to OMB for review and approval according to the procedure prescribed in 5 CFR 1320.12. Additional comments on this ICR should be submitted on or before October 3, 2008 to Brenda Aguilar at *baguilar@omb.eop.gov*, or fax at (202)–395–6974.

ADDRESSES: You may also submit comments to Dr. Dee Ann Batten by mail: Office of Policy and Evaluation, U.S. Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419 or by e-mail: *deeann.batten@mspb.gov* (please put ''Employee Survey'' in the subject line of the message).

FOR FURTHER INFORMATION CONTACT: Dr. Dee Ann Batten by phone at (202) 653–6772, ext. 1411, or by e-mail to *deeann.batten@mspb.gov* (please put ''Employee Survey'' in the subject line of the message).

SUPPLEMENTARY INFORMATION:

Proposed Project: MSPB Survey on Federal Telework. The MSPB is asking for approval to collect information to support its study on Federal Telework. Federal employees will be asked to complete a survey(s) about their experiences with and perceptions of Telework and other related topics about their organizations and careers. This study is being conducted under MSPB's statutory authority to ''conduct, from time to time, special studies relating to the civil service and to other merit systems in the executive branch, and report to the President and to the Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected.'' (Section 1204 Title 5 U.S.C.) In addition, the Code of Federal Regulations also describes the role of MSPB's Office of Policy and Evaluation as responsible for carrying out ''the Board's statutory responsibility to conduct special reviews and studies of the civil service and other merit systems in the Executive Branch, as well as oversight reviews of the significant actions of the Office of Personnel Management.''

Burden Statement

Per respondent/participant: The reporting burden for the collection of information on this request is estimated to vary from 15 minutes to 30 minutes, with an average of 20 minutes for each participant, including time for reviewing instructions and completing and reviewing the collection of information.

Respondents/participants/affected entities: Participants will be selected via stratified random sampling to facilitate representative samples of employees (including supervisory employees).

Estimated number of respondents: We plan to survey up to 24,000 Federal employees.

Frequency of response per participant: One response per participant.

Estimated total annual hour burden: We estimate the response rate to be 60 percent (14,400 total responses) resulting in an annual reporting burden of 4800 hours (.33 hours × 14,400).

Dated: August 28, 2008.

Timothy Korb,

Acting Clerk of the Board.

[FR Doc. E8–20409 Filed 9–2–08; 8:45 am]

BILLING CODE 7400–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (08–057)]

Notice of Intent To Grant Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant exclusive license.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive license in the United States to practice the inventions described and claimed in U.S. Patent No. 5,447,730, and NASA Case No. ARC–11943–1 entitled ''Rehydration Beverage'' to David Belaga, having a principal place of business in Longmont, CO. The patent rights in this invention have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The exclusive license may be granted unless within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of Chief Counsel, Ames Research Center, Mail Stop 202A–4, Moffett Field, CA 94035–1000. (650) 604–5104; Fax (650) 604–2767.

FOR FURTHER INFORMATION CONTACT: Robert M. Padilla, Chief Patent Counsel, Office of Chief Counsel, NASA Ames Research Center, Mail Stop 202A–4, Moffett Field, CA 94035–1000. (650) 604–5104; Fax (650) 604–2767. Information about other NASA inventions available for licensing can be found online at *http://techtracs.nasa.gov/.*

Dated: August 27, 2008.

Michael C. Wholley,

General Counsel.

[FR Doc. E8–20423 Filed 9–2–08; 8:45 am]

BILLING CODE 7510–13–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 54-foot steel-hulled ketch, *Northanger*, sailing and making landings along the west coast of the Antarctic Peninsula, operated by the Explorer's Corner 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 by October 3, 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 a sailing ketch, Northanger, conducting passenger landings along the western coast of the Antarctic Peninsula. The small amount of waste created by the expedition team will be removed, including all fuel bottles, batteries, plastics, and non-combustible wastes, including perishable and nonperishable food wastes.

The permit applicant is: Olaf Malver, Explorers' Corner LLC, 1865 Solano Avenue, PMB926, Berkeley, CA 94707. Permit application No. 2009 WM–003.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. E8–20268 Filed 9–2–08; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–219-LR]

In the Matter of: Amergen Energy Company, LLC (License Renewal for Oyster Creek Nuclear Generating Station); Notice of Appointment of Adjudicatory Employees

Commissioners: Dale E. Klein, Chairman, Gregory B. Jaczko, Peter B. Lyons, Kristine L. Svinicki.

Pursuant to 10 CFR 2.4, notice is hereby given that Mr. Hipólito J. González, Materials Engineer, Office of Nuclear Material Safety and Safeguards, and Mr. Paul G. Oberson, Materials Engineer, Office of Nuclear Material Safety and Safeguards, have been appointed as Commission adjudicatory employees within the meaning of section 2.4, to advise the Commission regarding issues relating to review of the Licensing Board's July 24, 2008 order in this case (LBP–08–12). Neither Mr. González nor Mr. Oberson has previously performed any investigative or litigating function in connection with this or any related proceeding. Until such time as a final decision is issued in this matter, interested persons outside the agency and agency employees performing investigative or litigating functions in this proceeding are required to observe the restrictions of 10 CFR 2.347 and 2.348 in their communications with Mr. González and Mr. Oberson.

It is so ordered.

Dated at Rockville, Maryland, this 27th day of August 2008.

For the Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E8–20366 Filed 9–2–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of September 1, 8, 15, 22, 29, October 6, 2008.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of September 1, 2008

There are no meetings scheduled for the week of September 1, 2008.

Week of September 8, 2008—Tentative

There are no meetings scheduled for the week of September 8, 2008.

Week of September 15, 2008—Tentative

There are no meetings scheduled for the week of September 15, 2008.

Week of September 22, 2008—Tentative

There are no meetings scheduled for the week of September 22, 2008.

Week of September 29, 2008—Tentative

There are no meetings scheduled for the week of September 29, 2008.

Week of October 6, 2008—Tentative

There are no meetings scheduled for the week of October 6, 2008.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html*.

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *REB3@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: August 28, 2008.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. E8–20478 Filed 8–29–08; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Request for a License To Import Radioactive Waste

Pursuant to 10 CFR 110.70(c) ''Public Notice of Receipt of an Application,'' please take notice that the Nuclear Regulatory Commission (NRC) has received the following request for an import license. Copies of the request are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link *http://www.nrc.gov/reading-rm.html* at the NRC Homepage.

Requests for a hearing or intervention must be filed in accordance with the procedures set forth in 10 CFR part 110, subpart H and be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

A request for a hearing or petition for leave to intervene may be filed with the NRC electronically in accordance with NRC's E-Filing rule promulgated in August 2007, 72 FR 49139 (Aug. 28, 2007). Information about filing electronically is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. To ensure timely electronic filing, at least five days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by e-mail at *HEARING.DOCKET@NRC.GOV*, or by calling (301) 415–1677, to request a digital ID certificate and allow for the creation of an electronic docket.

In addition to a request for hearing or petition for leave to intervene, written comments, in accordance with 10 CFR 110.81, should be submitted within thirty days after publication of this notice in the **Federal Register** to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications.

The information concerning this import license application follows.

NRC IMPORT LICENSE APPLICATION: DESCRIPTION OF MATERIAL

Name of applicant, date of application, date received, application No., Docket No.	Material type	End use	Country of origin
Eastern Technologies, Inc., July 21, 2008, July 23, 2008, IW025, 11005757.	Class A radioactive waste consisting of corrosion activation and mixed fission products (predominantly Co-60, Co-58 and Mn-54) as contaminants on used protective clothing and other related items.	Laundering and decontamination of protective clothing and related products used at the Angra 1 Nuclear Power Plant in Brazil.	Brazil.

For the Nuclear Regulatory Commission.

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

Margaret M. Doane,

Director, Office of International Programs.

[FR Doc. E8–20367 Filed 9–2–08; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Data Collection(s) Available for Public Comment and Recommendations

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collections are necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the

quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

1. Title and Purpose of Information Collection

Employee's Certification; OMB 3220–0140

Section 2 of the Railroad Retirement Act (RRA), provides for the payment of an annuity to the spouse or divorced spouse of a retired railroad employee. For the spouse or divorced spouse to qualify for an annuity, the RRB must determine if the employee's current marriage to the applicant is valid.

The requirements for obtaining documentary evidence to determine valid marital relationships are prescribed in 20 CFR 219.30 through 219.35. Section 2(e) of the RRA requires that an employee must relinquish all rights to any railroad employer service before a spouse annuity can be paid.

The RRB uses Form G–346 to obtain the information needed to determine whether the employee's current marriage is valid. Form G–346 is completed by the retired employee who is the husband or wife of the applicant for a spouse annuity. Completion is required to obtain a benefit. One response is requested of each respondent.

The RRB proposes no changes to Form G–346. The RRB estimates that 6,900 G–346's will be completed annually at an estimated completion time of five minutes per response. Total respondent burden is estimated at 575 hours.

2. Title and Purpose of Information Collection

Application and Claim for RUIA Benefits Due at Death; OMB 3220–0055

Under Section 2(g) of the Railroad Unemployment Insurance Act (RUIA), benefits under that Act that accrued but were not paid because of the death of an employee shall be paid to the same individual(s) to whom benefits are payable under Section 6(a)(1) of the Railroad Retirement Act. The provisions relating to the payment of such benefits are prescribed in 20 CFR 325.5 and 20 CFR 335.5.

The RRB provides Form UI–63 for use in applying for the accrued sickness or unemployment benefits unpaid at the death of the employee and for securing the information needed by the RRB to identify the proper payee. Completion is voluntary. One response is requested of each respondent.

The RRB proposes non-burden impacting editorial changes (for clarification purposes) and formatting changes to Form UI–63. The completion time for Form UI–63 is estimated at 7 minutes. The RRB estimates that approximately 200 responses are received annually. Total annual respondent burden is estimated at 23 hours.

Additional Information or Comments: To request more information regarding either of the information collections listed above or to obtain copies of the information collection justifications, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to *Charles.Mierzwa@RRB.GOV.* Comments regarding the information collections should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or via an e-mail to *Ronald.Hodapp@RRB.GOV.* Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. E8–20300 Filed 9–2–08; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–28369; File No. 812–13451]

Allianz Life Insurance Company of North America, et al.

August 28, 2008.

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of application for an order of approval pursuant to Section 26(c) of the Investment Company Act of 1940, as amended (the ''1940 Act''), and an order of exemption pursuant to Section 17(b) of the Act from Section 17(a) of the Act.

APPLICANTS: Allianz Life Insurance Company of North America (''Allianz Life''), Allianz Life Variable Account A (''Allianz Account A''), Allianz Life Variable Account B (''Allianz Account B''), Allianz Life Insurance Company of New York (''Allianz NY'' and together with Allianz Life, ''Insurance Company Applicants''), and Allianz Life of NY Variable Account C (''Allianz Account C'', and together with Allianz Account A and Allianz Account B, ''Separate Accounts'' and, collectively with Insurance Company Applicants, ''Applicants''), and Allianz Variable Insurance Products Trust (''VIP Trust'' and collectively with Applicants, ''Section 17 Applicants'').

SUMMARY OF APPLICATION: Applicants seek an order pursuant to Section 26(c) of the 1940 Act, approving the substitutions of certain securities (the ''Substitutions'') issued by certain management investment companies and held by Separate Accounts to support certain variable annuity contracts and variable life insurance contracts (the ''Contracts'') issued by Insurance Company Applicants. Section 17 Applicants seek an order pursuant to Section 17(b) of the 1940 Act exempting them to the extent necessary to permit Insurance Company Applicants to carry out the Substitutions.

FILING DATE: The application was originally filed on November 19, 2007, and amended on August 27, 2008.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on September 18, 2008, and should be accompanied by proof of service on Applicants and VIP Trust in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission. ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants and VIP Trust, Allianz Life Insurance Company of North America, 5701 Golden Hills Dr., Minneapolis, MN 55416–1297; Allianz Life Insurance Company of New York, One Chase Manhattan Plaza, 37th Floor, New York, NY 10005–1423; Allianz Variable Insurance Products Trust, 5701 Golden Hills Dr., Minneapolis, MN 55416–1297.

FOR FURTHER INFORMATION CONTACT: Craig Ruckman, Law Clerk, at (202) 551–6753 or Harry Eisenstein, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 551–6795.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the Commission, 100 F Street, NE., Washington, DC 20549 (202–551–8090).

Applicants' Representations

1. Allianz Life is a stock life insurance company organized under the laws of the state of Minnesota. Allianz NY is a stock life insurance company organized under the laws of the state of New York.

2. Allianz Account A is registered as a unit investment trust under the 1940 Act (File No. 811–04965) and is used to fund certain variable life insurance policies issued by Allianz Life. Allianz Account A is divided into a number of subaccounts, each of which invests in and reflects the investment performance of a specific underlying registered investment company or portfolio thereof (each an ''Investment Option''). Three variable life insurance contracts funded by Allianz Account A are affected by this application.

Allianz Account B is registered as a unit investment trust under the 1940 Act (File No. 811–05618) and is used to fund certain variable annuity contracts issued by Allianz Life. Allianz Account B is divided into a number of subaccounts, each of which invests in and reflects the investment performance of a specific Investment Option. Fourteen variable annuity contracts funded by Allianz Account B are affected by this application.

Allianz Account C is registered as a unit investment trust under the 1940 Act (File No. 811–05716) and is used to fund certain variable annuity contracts issued by Allianz NY. Allianz Account C is divided into a number of subaccounts, each of which invests in and reflects the investment performance of a specific Investment Option. Six variable annuity contracts funded by Allianz Account C are affected by this application.

3. For purposes of the 1940 Act, Allianz Life is the depositor and sponsor of Allianz Account A and Allianz Account B, and Allianz NY is the depositor and sponsor of Allianz Account C, as those terms have been interpreted by the Commission with respect to variable annuity and variable life insurance separate accounts. Each Separate Account meets the definition of a ''separate account'' in Rule 0–1(e) under the 1940 Act.

4. The Contracts allow contractowners to allocate premium payments and transfer Contract value among the various subaccounts of the Separate Accounts. Of the 12 Contracts with effective and updated registration statements, eight offer all 78 Investment Options that are available under the Separate Accounts, two offer 74 Investment Options, one offers 73 Investment Options, and one offers 64 Investment Options. Two of these Contracts (known as Allianz Alterity and Allianz Rewards) have restrictions on the allocations that contractowners may make to the Investment Options if they select the optional Prime Plus Benefit. Under these Contracts, when certain risk or volatility limits are exceeded, allocations and transfers to certain Investment Options, including each of the Replaced Funds (as defined below), are limited or prohibited. The limits on allocations and transfers to the Replacement Funds (as defined below) under the Prime Plus Benefits are, and will be, no more restrictive than on the associated Replaced Funds.

In most instances, up to 12 transfers may be made during each year free of charge (the year is measured by the date of issuance of the Contract). Under these Contracts, Insurance Company Applicants have reserved the right to charge a $25 fee (or the lesser of $25 or 2% of the amount transferred for certain Contracts) for each transfer in excess of 12 per Contract year. Since the Contracts are not designed for professional market timing organizations, or other persons using programmed, large, or frequent transfers, Insurance Company Applicants have reserved the right to restrict transfer activity that they determine to be excessive or inappropriate.

5. Under the Contracts, Insurance Company Applicants reserve the right, subject to regulatory approval, to substitute one of the Investment Options with another Investment Option after appropriate notice. Moreover, the Contracts permit Insurance Company Applicants to limit allocation of purchase payments to one or more subaccounts that invest in an Investment Option. The prospectuses or statements of additional information for the Contracts also contain appropriate disclosure of these rights. Thus, subject to regulatory approval, the Contracts permit Insurance Company Applicants to stop accepting purchase payments into one or more Investment Options and/or to substitute the shares representing an Investment Option held in a subaccount for the shares representing another Investment Option.

6. The Contracts are variable annuity contracts and variable life insurance policies. Allianz Life currently issues individual deferred variable annuity contracts and has previously issued immediate variable annuity contracts and variable life insurance policies. Allianz NY issues individual deferred variable annuity contracts offered for sale in New York.

7. Currently, Allianz Life has the following registration statements which are effective and updated with the Commission for Contracts sponsored by Allianz Account B that offer the Replaced Funds as Investment Options:

Separate account	Registration No.	Contract name	Type of contract
Allianz Account B	333–82329	Allianz Alterity	Variable Deferred Annuity.
Allianz Account B	333–90260	Allianz High Five	Variable Deferred Annuity.
Allianz Account B	333–111049	Allianz High Five Bonus	Variable Deferred Annuity.
Allianz Account B	333–120181	Allianz High Five L	Variable Deferred Annuity.
Allianz Account B	333–95729	Allianz Rewards	Variable Deferred Annuity.
Allianz Account B	33–23035	Valuemark II	Variable Deferred Annuity.
Allianz Account B	33–72046	Valuemark III	Variable Deferred Annuity.
Allianz Account B	333–06709	Valuemark IV	Variable Deferred Annuity.

8. In addition, Allianz Life has the following registration statements that are effective, but no longer updated, for older Contracts sponsored by Allianz Account A and Allianz Account B that are no longer offered for sale and offer the Replaced Funds as Investment Options:

Separate account	Registration No.	Contract name	Type of contract
Allianz Account B	333–126217	Allianz Custom Income	Variable Deferred Annuity.
Allianz Account B	333–134267	Allianz Elite	Variable Deferred Annuity.

Separate account	Registration No.	Contract name	Type of contract
Allianz Account A	33–11158	Allianz ValueLife	Flexible Premium Variable Universal Life.
Allianz Account B	333–63719	USAllianz Charter	Variable Deferred Annuity.
Allianz Account B	333–101812	USAllianz Charter II	Variable Deferred Annuity.
Allianz Account B	333–47886	USAllianz Dimensions	Variable Deferred Annuity.
Allianz Account A	333–60206	USAllianz LifeFund	Flexible Premium Variable Universal Life.
Allianz Account B	33–76190	Valuemark Income Plus	Variable Immediate Annuity.
Allianz Account A	33–15464	Valuemark Life	Single Premium Variable Life.

9. Currently Allianz NY has the following registration statements which are effective and updated with the Commission for Contracts sponsored by Allianz Account C that offer the Replaced Funds as Investment Options:

Separate account	Registration No.	Contract name	Type of contract
Allianz Account C	333–19699	Allianz Advantage NY	Variable Deferred Annuity.
Allianz Account C	333–105274	Allianz Charter II NY	Variable Deferred Annuity.
Allianz Account C	333–124767	Allianz High Five NY	Variable Deferred Annuity.
Allianz Account C	333–75718	Allianz Opportunity NY	Variable Deferred Annuity.

10. In addition, Allianz NY has the following registration statements that are effective, but no longer updated, for older Contracts sponsored by Allianz Account C that are no longer offered for sale and offer the Replaced Funds as Investment Options:

Separate account	Registration No.	Contract name	Type of contract
Allianz Account C	33–26646	Valuemark II NY	Variable Deferred Annuity.
Allianz Account C	333–19699	Valuemark IV NY	Variable Deferred Annuity.

11. Applicants propose to substitute certain classes of shares of the AZL Jennison 20/20 Focus Fund, AZL S&P 500 Index Fund, and AZL Small Cap Stock Index Fund (each a ''Replacement Fund'' and collectively the ''Replacement Funds'') for certain classes of shares of the corresponding funds listed in the table below (each a ''Replaced Fund'' and collectively the ''Replaced Funds'') currently held by the Separate Accounts.

Replacement fund (subadviser)	Share class(es)	Replaced fund (adviser/subadviser)	Share class(es)
AZL Jennison 20/20 Focus Fund (Jennison Associates LLC).	Class 2	Jennison 20/20 Focus Portfolio (Prudential Investments LLC/Jennison Associates LLC).	Class 2.
AZL S&P 500 Index Fund (The Dreyfus Corporation).	Class 1 Class 2	Dreyfus Stock Index Fund, Inc. (The Dreyfus Corporation).	Initial Service.
AZL Small Cap Stock Index Fund (The Dreyfus Corporation).	Class 2	Dreyfus Investment Portfolios Small Cap Stock Index Portfolio (The Dreyfus Corporation).	Service.

12. Each Replacement Fund is a series of the VIP Trust, a Delaware business trust. The VIP Trust is registered as an open-end management investment company under the 1940 Act (File No. 811–9491) and its shares are registered as securities under the Securities Act of 1933, as amended (the ''1933 Act'') (File No. 333–83423).

13. Each of the Replacement Funds, as well as all other funds offered by the VIP Trust, is managed by Allianz Investment Management LLC (''AZIM''), a wholly owned subsidiary of Allianz Life. AZIM is registered as an investment adviser with the Commission pursuant to the Investment Advisers Act of 1940 (File No. 801–60167).

14. The AZL Jennison 20/20 Focus Fund is assessed a 12b–1 fee at an annual rate of 0.25% of average daily net assets, which is the maximum 12b–1 fee permitted under its distribution plan. Class 1 shares of the AZL S&P 500 Index Fund are not assessed a 12b–1 fee, while Class 2 shares of the AZL S&P 500 Index Fund are assessed a 12b–1 fee at an annual rate of 0.25% of average daily net assets attributable to Class 2 shares, which is the maximum 12b–1 fee permitted under its distribution plan. The AZL Small Cap Stock Index Fund is assessed a 12b–1 fee at an annual rate of 0.25% of average daily net assets, which is the maximum 12b–1 fee permitted under its distribution plan.

15. Under the terms of a ''manager of managers'' exemptive order issued by the Commission pursuant to Section 6(c) of the 1940 Act, Investment Company Act Release No. 25734 (September 17, 2002), AZIM selects and manages subadvisers for the various series of the VIP Trust, subject to the oversight of the Board of Trustees of the VIP Trust, without obtaining shareholder approval (the ''Manager of Managers Order''). The relief granted in the Manager of Managers Order extends to all of the Replacement Funds. The Replacement Funds are offered to contractowners via prospectuses containing disclosure (1) describing the existence, substance, and effect of the Manager of Managers Order; (2) holding the Replacement Funds out to the public as employing the management structure described in the application for the Manager of Managers Order; and (3) explaining that AZIM has the ultimate responsibility (subject to oversight by the Board of Trustees of the

VIP Trust) to oversee the subadvisers and recommend their hiring, termination, and replacement. The Replacement Funds' prospectuses will be provided to each affected contractowner prior to the Substitutions.

16. The Dreyfus Investment Portfolios Small Cap Stock Index Portfolio (''Dreyfus IP Small Cap Stock Index Portfolio'') is a series of Dreyfus Investment Portfolios (''Dreyfus IP''). Service shares of the Dreyfus IP Small Cap Stock Index Portfolio are assessed a 12b–1 fee at an annual rate of 0.25% of average daily net assets, which is the maximum 12b–1 fee permitted under its distribution plan.

Initial shares of the Dreyfus Stock Index Fund, Inc. are not assessed a 12b–1 fee, while Service shares of the Dreyfus Stock Index Fund, Inc. are assessed a 12b–1 fee at an annual rate of 0.25% of average daily net assets attributable to Service shares, which is the maximum 12b–1 fee permitted under its distribution plan. The Jennison 20/20 Focus Portfolio is a series of the Prudential Series Fund (the ''Prudential Series''). Class 2 shares are assessed a 12b–1 fee at an annual rate of 0.25% of average daily net assets, which is the maximum 12b–1 fee permitted under its distribution plan.

17. The following chart summarizes the advisers, investment objective, principal investment strategies, principal investment risks, and asset size of the Jennison 20/20 Focus Portfolio and the AZL Jennison 20/20 Focus Fund, as stated in their respective prospectuses and statements of additional information.

	Replaced fund	Replacement fund
Fund Name	Jennison 20/20 Focus Portfolio	AZL Jennison 20/20 Focus Fund.
Adviser/Subadviser	Prudential Investments LLC/Jennison Associates LLC.	AZIM/Jennison Associates LLC.
Investment Objective	Long-term growth of capital	The investment objective of the AZL Jennison 20/20 Focus Fund is long-term growth of capital. This means that the Subadviser seeks investments whose prices will increase over several years.
Principal Investment Strategies	Invest in up to 40 equity and equity-related securities of U.S. companies that are selected by the Portfolio's two portfolio managers (up to 20 by the value and 20 by the growth portfolio manager) as having strong capital appreciation potential.	The Fund normally invests at least 80% of its total assets in approximately 40 (which may range up to 45) equity and equity-related securities of companies that the Subadviser believes have strong capital appreciation potential. The Fund's strategy is to combine the efforts of two portfolio managers with different styles (value and growth).
Principal Risks	● Company risk. ● Derivatives risk. ● Foreign investment risk. ○ Currency risk. ○ Emerging market risk. ○ Foreign market risk. ○ Information risk. ○ Liquidity risk. ○ Political developments. ○ Political risk. ○ Regulatory risk. ● Leveraging risk. ● Management risk. ● Market risk.	● Market Risk. ● Selection Risk. ● Focused Investment Risk. ● Value Stocks Risk. ● Growth Stocks Risk. ● Initial Public Offerings Risk. ● Frequent Trading. ● Foreign Risk. ● Convertible Securities Risk. ● Derivatives Risk. ● Real Estate Investments Risk. ● Credit Risk. ● Interest Rate Risk. ● Liquidity Risk.
Fund Asset Level as of 12/31/07	$379.9 million [1]	$383.2 million.

[1] Assets held in the Separate Accounts on December 31, 2007, were $112.7 million.

18. The following chart compares the management fees and the total operating expenses (before and after any waivers and reimbursements) for the year ended December 31, 2007, expressed as an annual percentage of average daily net assets, of the Jennison 20/20 Focus Portfolio and the AZL Jennison 20/20 Focus Fund. As noted below, the Net Total Operating Expenses are less for the AZL Jennison 20/20 Focus Fund than for the Jennison 20/20 Focus Portfolio.

[In percent]

	Replaced fund	Replacement fund
Fund Name	Jennison 20/20 Focus Portfolio	AZL Jennison 20/20 Focus Fund
Management Fee	0.75	0.77
12b–1 Fees	0.25	0.25
Other Expenses	0.22	0.10
Acquired Fund Fees & Expenses	0.00	0.00
Total Annual Fund Operating Expenses	1.22	1.12

[In percent]—Continued

	Replaced fund	Replacement fund
Fee Waiver	0.00	0.00
Net Annual Fund Operating Expenses	1.22	1.12

19. The following chart summarizes the advisers, investment objective, principal investment strategies, principal investment risks, and asset size of the Dreyfus Stock Index Fund, Inc., and the AZL S&P 500 Index Fund, as stated in their respective prospectuses and statements of additional information.

	Replaced fund	Replacement fund
Fund Name	Dreyfus Stock Index Fund, Inc	AZL S&P 500 Index Fund.
Adviser/Subadviser	The Dreyfus Corporation	AZIM/The Dreyfus Corporation.
Investment Objective	The fund seeks to match the total return of the Standard & Poor's 500 Composite Stock Price Index.	The AZL S&P 500 Index Fund seeks to match the total return of the Standard & Poor's 500 Composite Stock Price Index (S&P 500®).
Principal Investment Strategies	To pursue this goal, the fund generally invests in all 500 stocks in the S&P 500® in proportion to their weighting in the index.	To pursue its goal the Fund's subadviser, The Dreyfus Corporation ("Dreyfus"), normally invests in all 500 stocks in the S&P 500® in proportion to their weighting in the index.
Principal Risks	• Market Risk. • Issuer Risk. • Indexing Strategy Risk. • Derivatives Risk.	• Market Risk. • Indexing Strategy Risk. • Insurer Risk. • Derivatives Risk. • License Termination Risk.
Fund Asset Level as of 12/31/07	$3.2 billion [2]	$28.0 million.[3]

20. The following chart compares the management fees and the total operating expenses (before and after any waivers and reimbursements) for the year ended December 31, 2007, expressed as an annual percentage of average daily net assets, of the Dreyfus Stock Index Fund, Inc. and the AZL S&P 500 Index Fund. As noted below, an expense cap will be in place for the AZL S&P 500 Index Fund for two years from the date of the Substitution so that the Net Total Operating Expenses for the AZL S&P 500 Index Fund are expected to be no greater than for the Dreyfus Stock Index Fund, Inc.

[In percent]

Fund Name	Replaced fund		Replacement fund	
	Dreyfus Stock Index Fund, Inc.		AZL S&P 500 Index Fund	
	Initial Class	Service Class	Class 1	Class 2
Management Fee	0.25	0.25	0.17	0.17
12b–1 Fees	0.00	0.25	0.00	0.25
Other Expenses	0.02	0.02	0.31	0.31
Acquired Fund Fees & Expenses	0.00	0.00	0.00	0.00
Total Annual Fund Operating Expenses.	0.27	0.52	0.48	0.73
Fee Waiver	0.00	0.00	0.24	0.24
Net Annual Fund Operating Expenses.	0.27	0.52	*0.24	*0.49

* Net Annual Fund Operating Expenses will be capped by the Fund's manager at 0.24% and 0.49%, net of Acquired Fund Fees and Expenses, for Class 1 and Class 2 shares respectively for two years from the date of the Substitution.

21. The following chart summarizes the advisers, investment objective, principal investment strategies, principal investment risks, and asset size of the Dreyfus IP Small Cap Stock Index Portfolio and the AZL Small Cap Stock Index Fund, as stated in their respective prospectuses and statements of additional information.

	Replaced fund	Replacement fund
Fund Name	Dreyfus IP Small Cap Stock Index Portfolio	AZL Small Cap Stock Index Fund.
Adviser/Subadviser	The Dreyfus Corporation	AZIM/The Dreyfus Corporation.
Investment Objective	The portfolio seeks to match the performance of the Standard & Poor's (S&P) SmallCap 600 Index®.	The AZL Small Cap Stock Index Fund seeks to match the performance of the Standard & Poor's (S&P) Small Cap 600 Index®.
Principal Investment Strategies	To pursue this goal, the portfolio invests in a representative sample of stocks included in the S&P SmallCap 600 Index, and in futures whose performance is related to the index, rather than attempt to replicate the index.	To pursue this goal the Fund's subadviser, The Dreyfus Corporation ("Dreyfus"), invests in a representative sample of stocks included in the S&P SmallCap 600 Index® and in futures whose performance is related to the index, rather than attempting to replicate the index.
Principal Risks	• Market Risk. • Issuer Risk. • Small and midsize company Risk. • Indexing Strategy Risk. • Derivatives Risk.	• Market Risk. • Indexing Strategy Risk. • Capitalization Risk. • Issuer Risk. • Derivatives Risk. • License Termination Risk.
Fund Asset Level as of 12/31/07	$373.4 million [4]	$22.1 million. [5]

22. The following chart compares the management fees and the total operating expenses (before and after any waivers and reimbursements) for the year ended December 31, 2007, expressed as an annual percentage of average daily net assets, of the Dreyfus IP Small Cap Stock Index Portfolio and the AZL Small Cap Stock Index Fund. As noted below, an expense cap will be in place for the AZL Small Cap Stock Index for two years from the date of the Substitution so that the Net Total Operating Expenses for the AZL Small Cap Stock Index Fund are expected to be no greater than for the Dreyfus IP Small Cap Stock Index Portfolio.

[In percent]

	Replaced fund	Replacement fund
Fund Name	Dreyfus IP Small Cap Stock Index Portfolio	AZL Small Cap Stock Index Fund
Management Fee	0.35	0.26
12b–1 Fees	0.25	0.25
Other Expenses	0.01	0.36
Acquired Fund Fees & Expenses	0.00	0.00
Total Annual Fund Operating Expenses	0.61	0.87
Fee Waiver	0.00	0.29
Net Annual Fund Operating Expenses	0.61	0.58

23. As a result of the Substitutions, the number of Investment Options under each Contract will either not be decreased, or, in those cases where the number of Investment Options is being reduced, continue to offer a significant number of alternative Investment Options. Specifically, the number of Investment Options is currently expected to range in number from 29 to 75 after the Substitutions versus 29 to 78 before the Substitutions.

24. At the close of business on the day of the Substitution (the "Substitution Date"), Insurance Company Applicants will each redeem shares of the Replaced Funds held by their Separate Accounts in kind and apply the proceeds of such redemptions to the purchase shares of the corresponding Replacement Funds. Thus, after the Substitutions, each subaccount of the Separate Accounts previously holding shares of a Replaced Fund will hold shares of the corresponding Replacement Fund.

25. Redemption requests and purchase orders will be placed simultaneously so that redemption of Replaced Fund shares and purchase of Replacement Fund shares will both occur at the price for such shares computed as of the close of business on the Substitution Date in a manner consistent with Rule 22c–1 under the 1940 Act. As a result, the full net asset value of the Replaced Fund shares held by the Separate Accounts will be reflected in the contractowners' Contract values following the Substitutions, without reduction for brokerage or other such fees or charges. All expenses incurred in connection with the Substitutions, including legal, accounting, transactional, and other fees and expenses, including brokerage

[2] Includes $2.7 billion for initial shares and $532.7 million for Service shares. Assets held in the Separate Accounts on December 31, 2007 were $20.1 million for Initial shares, $315.0 million for Service shares.

[3] Class 1 and Class 2 combined.

[4] Assets held in Separate Accounts on December 31, 2007 were $227.1 million.

[5] The fund commenced operations on May 1, 2007.

commissions, will be paid by Insurance Company Applicants, or the manager of the Replacement Funds. Accordingly, Contract value attributable to contractowners then invested in the Replaced Funds will remain fully invested at all times, and the Substitutions will take place at relative net asset value with no change in the amount of any contractowner's Contract value, death benefit, or in the dollar value of his or her investments in the applicable Separate Account.

26. Affected contractowners will not incur any fees or charges in connection with the Substitutions so that the net asset value of redeemed shares of the Replaced Funds held by the Separate Accounts will be reflected in the contractowners' Contract values following the Substitutions. Moreover, neither the obligations of the respective Insurance Company Applicants under the Contracts nor the rights of contractowners will be altered in any way by the Substitutions. The Substitutions will not impose any tax liability or have any adverse tax consequences on contractowners. The Substitutions will not cause Contract fees and charges currently being paid by existing owners of Contracts to be greater after the Substitutions than they were before the Substitutions. For a period of at least 30 days following the Substitutions, Insurance Company Applicants will not exercise any right it may have under the Contracts to impose restrictions on transfers except pursuant to any Investment Option allocation restrictions under the Contracts.6

27. From the date that notice of the Substitutions was provided to affected contractowners by means of a prospectus supplement (the ''Pre-Substitution Supplement'') through the date 30 days after the Substitution (the ''Free Transfer Period''), the respective Insurance Company Applicants will allow the affected contractowners to make one transfer of Contract value held in each subaccount investing in the Replaced Funds (before the Substitutions) or Replacement Fund (after the Substitutions) to one or more Investment Options available pursuant to the Contracts without charge and without assessing transfer fees. Such a transfer also will not be counted as a transfer request under any contractual provisions of the Contracts that limit the number of transfers that may be made without charge.

28. Under the Manager of Managers Order, subject to the approval of the Board of Trustees of the VIP Trust, AZIM may retain one or more subadvisers for any fund of the VIP Trust without the approval of shareholders of the fund. However, after the Substitution Date, Insurance Company Applicants represent that AZIM will not retain any new subadviser for the AZL S&P 500 Index Fund and the AZL Small Cap Stock Index Fund, or otherwise rely on the Manager of Managers Order in connection with AZL S&P 500 Index Fund and the AZL Small Cap Stock Index Fund, without first obtaining shareholder approval of either: (1) the new subadviser, or (2) the fund's ability to rely on the Manager of Managers Order.

29. Notice of the Substitutions and Free Transfer Period has been given to all affected contractowners by means of the Pre-Substitution Supplement for each of the Contracts stating that Applicants have filed the application and seek approval of the Substitutions. The Pre-Substitution Supplement sets forth the anticipated Substitution Date and advises affected contractowners that Contract values allocated to subaccounts investing in shares of the Replaced Funds will be transferred to subaccounts investing in shares of the Replacement Funds, without charge (including sales charges or surrender charges) and without counting toward the number of transfers that may be permitted without charge, on the Substitution Date. The Pre-Substitution Supplement states that, during the Free Transfer Period, affected contractowners may make one transfer of Contract value from each subaccount investing in a Replaced Fund (before the Substitutions) or a Replacement Fund (after the Substitutions) to one or more other subaccount(s), subject to any Investment Option allocation restrictions under their Contract, without charge and without the transfer counting against any limitations on transfers. Further, prior to the Substitutions, all affected contractowners will receive a copy of the most recent prospectus for the Replacement Funds.

30. Within five days following the Substitutions, Insurance Company Applicants will send a written notice to affected contractowners stating that the Substitutions were carried out and reiterating the information set forth in the Pre-Substitution Supplement.

31. For those who were contractowners on the date of the proposed Substitutions, Insurance Company Applicants will reimburse, on the last business day of each fiscal period (not to exceed a fiscal quarter) during the 24 months following the Substitution Date, those contractowners whose subaccount invests in any Replacement Fund such that the sum of such Replacement Fund's (a) operating expenses (taking into account fee waivers and expense reimbursements), net of any acquired fund fees and expenses, and (b) asset-based fees and charges for the Contracts for such period will not exceed, on an annualized basis, the sum of the corresponding Replaced Fund's operating expenses (taking into account any fee waiver or expense reimbursement) and subaccount expenses for the fiscal year ended December 31, 2007. Thereafter, expenses for the Replacement Funds will vary from year to year and may exceed those of the corresponding Replaced Funds.

Applicants' Legal Analysis

1. Applicants represent that Section 26(c) of the 1940 Act makes it unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission approves the substitution. Applicants note that the Commission will approve such a substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants note the legislative history makes clear that Congress intended Section 26(c) of the 1940 Act to provide the Commission scrutiny of proposed substitutions that could otherwise, in effect, force shareholders dissatisfied with the substituted security to redeem their shares, thereby possibly incurring either a loss of the sales load deducted from initial purchase payments, an additional sales load upon reinvestment of the proceeds of redemption, or both.

3. Applicants assert that Section 26(c) of the 1940 Act would not appear to have been designed to prohibit transactions like the Substitutions, in which a number of customer protections are provided, including the fact that the applicable unit investment trusts (the Separate Accounts) offer in excess of 63 different Investment Options.

4. Applicants claim that the purposes, terms, and conditions of the Substitutions are consistent with the principles and purposes of Section 26(c) of the 1940 Act and do not entail any of the abuses that Section 26(c) of the 1940 Act is designed to prevent. Contractowners will not be assessed charges in connection with the Substitutions and their annual fund net total operating expenses are expected to remain the same or decrease. In addition, to the extent a contractowner does not wish to participate in the

Substitutions, he or she is free to make one transfer to any other option available under the relevant Contract at any time prior to the date of the Substitutions or during the 30-day period following the date of the Substitutions without any transfer fee and without that transfer counting as a transfer request under any contractual provisions of the Contracts that limit the number of transfers that may be made without charge. Moreover, the Contracts have features that Applicants believe provide adequate protection to contractowners. These features include:

(1) A significant number of different Investment Options;

(2) Investment Options that are reasonably diversified;

(3) Investment Options that are reasonably seasoned;

(4) Reasonable transferability between Investment Options;

(5) Investment choices that include an option that is intended to reduce or eliminate fluctuation of principal; and

(6) Reasonable liquidity in the form of free partial withdrawal rights.

5. In addition, contractowners will be substituted into Replacement Funds whose investment objectives, principal investment policies, and risks Applicants believe will be substantially similar or virtually identical to those of the corresponding Replaced Funds, with net total operating expenses that are anticipated to be equal to or less than those of their corresponding Replaced Funds. Like the Replaced Funds which are not assessed a 12b–1 fee, their corresponding Replacement Funds will not be assessed a 12b–1 fee.

6. In addition to substantially similar or virtually identical investment objectives, principal investment policies, and risks, as well as anticipated equal or lower net total operating expenses, Applicants maintain that the types of investment advisory and administrative services that will be provided to the Replacement Funds by their subadvisers will be comparable to the types of investment advisory and administrative services currently provided to the Replaced Funds by their respective investment advisers. Contractowners who become beneficial owners of the Replacement Funds as a result of the proposed Substitutions will enjoy continuity of their asset manager. These Replacement Funds will be managed by AZIM, but the asset management activity will be handled by the subadviser that currently manages the corresponding Replaced Fund.

7. Moreover, because the Replacement Funds operate pursuant to the Manager of Managers Order, Applicants believe that the proposed Substitutions will provide protection to contractowners by giving AZIM the flexibility to change the subadvisers of the Replacement Funds should such a change become warranted or advisable. Thus, Applicants will provide contractowners with investment vehicles following the Substitutions that will be substantially similar to those offered prior to the Substitutions.

8. In further support of their contention that the Substitutions do not present the type of costly forced redemption or other harms that Section 26(c) of the 1940 Act was intended to guard against and are consistent with the protection of investors and the purposes fairly intended by the 1940 Act, Applicants note that the Substitutions will be subject to the following terms and conditions:

(1) A contractowner may request that his or her Contract value be reallocated to another Investment Option, subject to any Investment Option allocation restrictions under their Contract, at any time during the Free Transfer Period without charge. The Free Transfer Period provides sufficient time for contractowners to reconsider their Investment Options;

(2) The Substitutions will be at net asset value of the respective shares, without the imposition of any transfer, brokerage or similar charge;

(3) Neither the contractowners, the Replaced Funds, nor the Replacement Funds will bear any costs of the Substitutions, and all legal, accounting, and transactional costs and any brokerage or other costs incurred in the Substitutions will be paid by Insurance Company Applicants or the managers to the Replacement Funds, and accordingly, the Substitutions will have no impact on the contractowners' Contract values;

(4) The Substitutions will in no way alter the contractual obligations of Insurance Company Applicants or the rights and privileges of contractowners under the Contracts; and

(5) The Substitutions will in no way alter the tax benefits to contractowners.

9. Applicants request an order of the Commission pursuant to Section 26(c) of the 1940 Act approving the Substitutions on the terms set forth in this Application. Applicants believe, for all of the reasons stated above, that each Substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

10. Section 17 Applicants also request that the Commission issue an order pursuant to Section 17(b) of the 1940 Act exempting them from Section 17(a) of the 1940 Act to the extent necessary to permit Insurance Company Applicants to carry out the Substitutions by redeeming shares of the Replaced Funds in kind and using the proceeds to purchase shares of the Replacement Funds.

11. Section 17(a)(1) of the 1940 Act prohibits any affiliated person of a registered investment company, or an affiliated person of an affiliated person, acting as principal, from selling any security or other property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits any of the persons described above, acting as principal, from purchasing any security or other property from such registered investment company. Section 2(a)(3) of the 1940 Act defines the term ''affiliated person'' of another person in relevant part as:

> (A) Any person directly or indirectly owning, controlling, or holding with power to vote, five per centum or more of the outstanding voting securities of such other person; (B) any person five per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (C) any person directly or indirectly controlling, controlled by, or under common control with, such other person; (D) any officer, director, partner, copartner, or employee of such other person; (E) if such other person is an investment company, any investment adviser thereof or any member of an advisory board thereof; and (F) if such other person is an unincorporated investment company not having a board of directors, the depositor thereof.

12. Applicants may be considered affiliates of each of the Replacement Funds based upon the definition of ''affiliated person'' in Section 2(a)(3) of the 1940 Act. Shares of the funds of the VIP Trust are held solely by Separate Accounts. Because shares held by a separate account of an insurance company are legally owned by the insurance company, Insurance Company Applicants, and their affiliates collectively, own of record all of the shares of the funds of the VIP Trust, including the Replacement Funds. Further, AZIM, an affiliated person of the VIP Trust by virtue of Section 2(a)(3)(E) of the 1940 Act, is a wholly owned subsidiary of Allianz Life. For these reasons, the VIP Trust and the Replacement Funds are arguably under the control of Insurance Company Applicants notwithstanding the fact that contractowners may be considered the beneficial owners of those shares held in the Separate Accounts. If the VIP Trust and the Replacement Funds are under the control of Insurance Company Applicants, then Insurance Company Applicants, or any person controlling

Insurance Company Applicants, or any person under common control with Insurance Company Applicants, is an affiliated person of the VIP Trust and the Replacement Funds. Similarly, if the VIP Trust and the Replacement Funds are under the control of Insurance Company Applicants, then the VIP Trust and the Replacement Funds are affiliated persons of Insurance Company Applicants, and of any persons that control Insurance Company Applicants or are under common control with Insurance Company Applicants.

At the close of business on the Substitution Date, Insurance Company Applicants will redeem shares of the Replaced Funds either in kind or in cash and use the proceeds of such redemptions to purchase shares of the corresponding Replacement Funds, with each subaccount of the applicable Separate Account investing the proceeds of its redemption from the Replaced Funds in the applicable Replacement Funds. Thus, the proposed transactions may involve a transfer of portfolio securities by the Replaced Funds to Insurance Company Applicants; immediately thereafter, Insurance Company Applicants would purchase shares of the Replacement Funds with the portfolio securities received from the Replaced Funds. This aspect of the Substitutions may be deemed to involve one or more sales by Insurance Company Applicants of securities or other property to the Replacement Funds. Accordingly, this aspect of the Substitutions could be viewed as being prohibited by Section 17(a) of the 1940 Act. Accordingly, Section 17 Applicants seek relief from Section 17(a) of the 1940 Act for the in-kind purchases and sales of the Replacement Fund shares.

13. Section 17 Applicants assert that any in-kind redemptions and purchases for purposes of the Substitutions will be effected in a manner consistent with the investment objectives and policies of the Replacement Funds. Subject to the oversight of AZIM, the subadvisers of each of the Replacement Funds will review the securities holdings of their corresponding Replaced Fund and determine which of the Replaced Fund holdings would be suitable investments for the corresponding Replacement Fund in the overall context of that Replacement Fund's investment objective and policies and consistent with their management of the Replacement Fund, and will accept only those securities as consideration for shares that it would have acquired for each such fund in a cash transaction. Section 17 Applicants submit that these portfolio securities will be of the type and quality that the Replacement Funds would each have acquired with the proceeds from share sales had the shares been sold for cash.

14. Section 17 Applicants state that any securities to be paid out as redemption proceeds and subsequently contributed to the Replacement Funds to effect the contemplated in-kind purchases of shares will be valued in accordance with the normal valuation procedures of the redeeming and purchasing portfolios. The redeeming and purchasing values will be the same. Consistent with Rule 17a–7(d) under the 1940 Act, no brokerage commissions, fees, or other remuneration will be paid by the Replaced Funds or the Replacement Funds in connection with the in-kind transactions. If AZIM declines to accept particular portfolio securities of any of the Replaced Funds for purchase of in-kind shares of any of the Replacement Funds, those positions will be liquidated by the applicable Replaced Fund, and shares of the corresponding Replacement Fund will be purchased with cash.

15. Section 17(b) of the 1940 Act provides that the Commission may, upon application, grant an order exempting any transaction from the prohibitions of Section 17(a) of the 1940 Act if the evidence establishes that: (1) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (2) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and records found under the 1940 Act; and (3) the proposed transaction is consistent with the general purposes of the 1940 Act.

16. Section 17 Applicants submit that the terms of the Substitutions, including the consideration to be paid and received, are reasonable and fair and do not involve overreaching on the part of any person concerned principally because the transactions will conform with all but one of the conditions enumerated in Rule 17a–7 under the 1940 Act. The use of in-kind transactions will not cause contractowner interests to be diluted. The proposed transactions will take place at relative net asset value in conformity with the requirements of Section 22(c) of the 1940 Act and Rule 22c–1 thereunder with no change in the amount of any contractowner's Contract value or death benefit or in the dollar value of his or her investment in any of the Separate Accounts. Contractowners will not suffer any adverse tax consequences as a result of the Substitutions. Fees and charges under the Contracts will not increase because of the Substitutions. Even though they may not rely on Rule 17a–7 under the 1940 Act, Section 17 Applicants submit that the Rule's conditions outline the type of safeguards that result in transactions that are fair and reasonable to registered investment company participants and preclude overreaching in connection with an investment company by its affiliated persons.

17. The board of the VIP Trust has adopted procedures, as required by paragraph (e)(1) of Rule 17a–7 under the 1940 Act (the ''17a–7 Procedures''), pursuant to which the Replacement Funds may purchase and sell securities to and from their affiliates. Section 17 Applicants will carry out the proposed in-kind purchases in conformity with all of the conditions of Rule 17a–7 and the 17a–7 Procedures, except that the consideration paid for the securities being purchased or sold may not be entirely cash. Nevertheless, the circumstances surrounding the proposed Substitutions will be such as to offer to each Replacement Fund the same degree of protection from overreaching that Rule 17a–7 provides to them generally in connection with their purchase and sale of securities under that Rule in the ordinary course of their business. In particular, Insurance Company Applicants (or any of their affiliates) cannot effect the proposed transactions at a price that is disadvantageous to any of the Replacement Funds. Although the transactions may not be entirely for cash, each will be effected based upon (1) the independent market price of the portfolio securities valued as specified in paragraph (b) of Rule 17a–7, and (2) the net asset value per share of each fund involved, valued in accordance with the procedures disclosed in its respective registration statement and as required by Rule 22c–1 under the 1940 Act. No brokerage commission, fee, or other remuneration will be paid to any party in connection with the proposed transactions. The transactions will be reviewed by the Chief Compliance Officer of the VIP Trust, or his agents, and will be reported to the VIP Trust's Board of Trustees in the same manner as any other 17a–7 transaction by any of the Replacement Funds would be reported.

18. Section 17 Applicants also submit that the in-kind portfolio security transactions are consistent with the policies of the Replacement Funds and the VIP Trust as recited in the current registration statements and reports filed by each under the 1940 Act.

19. In addition, Section 17 Applicants submit that the proposed in-kind portfolio security transactions are consistent with the general purposes of the 1940 Act as stated in the Findings and Declaration of Policy in Section 1 of the 1940 Act. The proposed transactions do not present any of the conditions or abuses that the 1940 Act was designed to prevent. Further, Section 17 Applicants note that securities to be paid out as redemption proceeds and subsequently contributed to the Replacement Funds to effect the contemplated in-kind purchases of shares will be valued based on the normal valuation procedures of the redeeming Replaced Funds and purchasing Replacement Funds. Therefore, there will be no change in value to any contractowner as a result of the Substitutions.

Conclusion

Applicants assert that for the reasons summarized above that the proposed Substitutions and related transactions meet the standards of Section 26(c) of the Act and are consistent with the standards of Section 17(b) of the Act and that the requested orders should be granted.

For the Commission, by the Division of Investment Management pursuant to delegated authority.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–20398 Filed 9–2–08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58424; File No. SR–OPRA–2008–03]

Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Proposed Amendment to the Options Price Reporting Authority's Academic Waiver Policy

August 26, 2008.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 608 thereunder,[2] notice is hereby given that on August 11, 2008, the Options Price Reporting Authority (''OPRA'') submitted to the Securities and Exchange Commission (''Commission'') an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (''OPRA Plan'').[3] The proposed amendment would revise OPRA's ''Academic Waiver Policy.''[4] The Commission is publishing this notice to solicit comments from interested persons on the proposed OPRA Plan amendment.

I. Description and Purpose of the Plan Amendment

Pursuant to its Academic Waiver Policy, OPRA waives its fees for universities that wish to use its data for research and educational instruction purposes. An OPRA academic waiver is only for OPRA's own data fees, and only for devices or User IDs used by students and faculty for research purposes and in classroom environments. As is stated in the Policy, even if a university receives an academic waiver, the university must execute an OPRA Professional Subscriber Agreement and, if the university will control entitlement of its devices or User IDs, the university must also execute an Indirect Circuit Connection Rider, describe its use of OPRA data and its entitlement control process on ''Exhibit A'' to the Rider, and make reports to OPRA in accordance with the Rider of its devices or User IDs that are entitled to receive OPRA data.

The purpose of the revisions of OPRA's Academic Waiver Policy is, in general, to update the language of the Policy and emphasize certain aspects of the Policy. The proposed revisions do not change the Policy in any fundamental respect.

Among the changes that OPRA is proposing in order to update the language of the Policy are changes to eliminate a reference to ''annual administration fees'' (since OPRA's fees do not include an annual administration fee) and to incorporate references to ''User IDs'' in addition to ''devices'' (since OPRA permits its Vendors, and its Professional Subscribers that pay ''device-based fees'' and control their own enablement processes, to make reports to OPRA with respect to the ''User IDs'' that they enable for access to OPRA data as an alternative to the ''devices'' that they enable).

Among the aspects of the Policy that are emphasized in the revised Policy are that academic institutions that control their own enablement processes must make reports to OPRA with respect to the devices or User IDs that they have enabled for OPRA data, just as other OPRA Subscribers that control their own enablement process must.

The text of the proposed amendment to the OPRA Plan is available at OPRA, the Commission's Public Reference Room, and *http://opradata.com*.

II. Implementation of the OPRA Plan Amendment

Pursuant to paragraph (b)(3)(i) of Rule 608 under the Act,[5] OPRA designated this amendment as establishing or changing a fee or other charge collected on behalf of all of the OPRA participants in connection with access to, or use of, OPRA facilities, and pursuant to (b)(3)(iii) of Rule 608 under the Act,[6] OPRA designated this amendment as one involving solely technical or ministerial matters thereby qualifying the amendment for effectiveness upon filing. OPRA states that it will implement the revised form of the Academic Waiver Policy upon filing with the Commission.

The Commission may summarily abrogate the amendment within sixty days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 608(b)(2) under the Act[7] if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed OPRA Plan amendment 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

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] The OPRA Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 608 thereunder (formerly Rule 11Aa3–2). *See* Securities Exchange Act Release No. 17638 (March 18, 1981), 22 S.E.C. Docket 484 (March 31, 1981). The full text of the OPRA Plan is available at *http://www.opradata.com*.

The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The seven participants to the OPRA Plan are the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Incorporated, the International Securities Exchange, LLC, the NASDAQ Stock Market LLC, the NYSE Arca, Inc., and the Philadelphia Stock Exchange, Inc.

[4] OPRA has not previously filed the Policy pursuant to Rule 608 of Regulation NMS under the Act, and OPRA is proposing to formalize the Policy as part of its national market system plan by so filing it.

[5] 17 CFR 242.608(b)(3)(i).

[6] 17 CFR 242.608(b)(3)(iii).

[7] 17 CFR 242.608(b)(2).

No. SR–OPRA–2008–03 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–OPRA–2008–03. 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 plan amendment that are filed with the Commission, and all written communications relating to the proposed plan amendment 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 OPRA. 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–OPRA–2008–03 and should be submitted on or before September 24, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–20316 Filed 9–2–08; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58398; File No. SR–NYSE–2008–069]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Waiving Compliance With DRS Participation Rules for Foreign Private Issuers

August 20, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 30, 2008, the New York Stock Exchange LLC (''NYSE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE proposes to amend Section 501.00 of its Listed Company Manual to waive application of this section to any listed company that is a foreign private issuer and that submits a letter from an independent home country counsel certifying that a home country law or regulation prohibits compliance.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NYSE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, Section 501.00 of NYSE's Listed Company Manual (''Manual'') requires that all listed equity securities must be eligible for participation in a direct registration system operated by a securities depository. As the laws of certain countries may prohibit compliance with this rule, NYSE believes it is appropriate to waive its application to foreign private issuers upon provision of a letter from independent counsel confirming that such a prohibition exists.

Accordingly, NYSE proposes to amend Section 501.00(A) of its Manual to waive application of that section to any listed company that is a foreign private issuer and that submits to NYSE a letter from an independent home country counsel certifying that a home country law or regulation prohibits such compliance. All other foreign private issuers will be required to comply with Section 501.00.

NYSE also proposes to further modify Section 501.00(A) and to eliminate Section 501.00(B) to remove text relating to transition periods that have since expired.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)[4] that an exchange have rules that are designed to prevent fraudulent and manipulative practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest. NYSE believes that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act because it requires foreign private issuers to comply with the same requirement as U.S. companies that listed equity securities must be eligible for participation in a direct registration system unless the foreign private issuer is prohibited from doing so under its home country laws.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NYSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NYSE will notify

[1] 15 U.S.C. 78s(b)(1).

[2] Changes to the rule text can be found at *http://www.nyse.com.*

[3] The Commission has modified the text of the summaries prepared by NYSE.

[4] 15 U.S.C. 78f(b)(5).

the Commission of any written comments received by NYSE.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act [5] and Rule 19b–4(f)(6) [6] thereunder because it does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to the 30th day after the date of filing.[7] However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.[8]

The NYSE has requested that the Commission waive the 30-day operative delay so that the proposed rule change may take effect and become operative upon filing with the Commission pursuant to Section 19(b)(3)(A) [9] and Rule 19b–4(f)(6) [10] thereunder. Waiver of the 30-day operative delay will enable NYSE to list foreign private issuers whose home country laws prohibit them from complying with Section 501.00 of the Manual. NYSE notes that Nasdaq already has a comparable exception to its direct registration system eligibility requirement. As such, waiving the operative delay eliminates a potential competitive disadvantage that the NYSE currently faces in competing for listings.

For the foregoing reasons, the Commission believes that this rule filing qualifies for immediate effectiveness under paragraph (f)(6) of Rule 19b–4 [11] and that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby designates the proposal as operative upon filing.[12]

At any time within sixty days of the filing of such 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–NYSE–2008–069 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2008–069. 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 filings also will be available for inspection and copying at the principal office of NYSE and on NYSE's Web site, *http://www.nyse.com*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2008–069 and should be submitted on or before September 24, 2008.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–20382 Filed 9–2–08; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b–4(f)(6).

[7] *See* 17 CFR 240.19b–4(f)(6)(iii).

[8] In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The NYSE has satisfied this requirement.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6).

[12] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket Number: OST–95–177]

Notice of Request for Extension of a Previously Approved Collection

AGENCY: Office of the Secretary.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, this notice announces the Department of Transportation's (DOT) intention to request extension of a previously approved information collection.

DATES: Comments on this notice must be received on or before November 3, 2008.

ADDRESSES: You may submit a comment (identified by DOT Docket Number OST–95–177) by any of the following methods:

- *Web site: http://regulations.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Room W12–140, Washington, DC 20590–001.
- *Hand Delivery:* Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Wednesday and Federal Holidays.

Instructions: All comments must include the agency name and Docket Number OST–95–177. Note that all comments received will be posted without change to *http://*

regulations.gov, including any personal information provided. You should know that 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.).

Docket: For access to the docket to read background documents or comments, go to *http://regulations.gov* at any time or to Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Wednesday and Federal holidays.

If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: ''Comments on Docket OST–95–177''. The Docket Clerk will date stamp the postcard prior to returning it to you via the U.S. mail. Please note that due to delays in the delivery of U.S. mail to Federal offices in Washington, DC, we recommend that persons consider an alternative method (Internet, fax, or professional delivery service) to submit comments to the docket and ensure their timely receipt at U.S. DOT.

FOR FURTHER INFORMATION CONTACT: Aleta Best, Office of the Assistant Secretary for Aviation and International Affairs, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 493–0797.

SUPPLEMENTARY INFORMATION:

Title: Disclosure of Change-of-Gauge Services.

OMB Control Number: 2105–0538.

Expiration Date: November 30, 2008.

Type of Request: Extension of a previously approved collection.

Abstract: Change-of-gauge service is scheduled passenger air transportation for which the operating carrier uses one single flight number even though passengers do not travel in the same aircraft from origin to destination but must change planes at an intermediate stop. In addition to one-flight-to-one-flight change-of-gauge services, change-of-gauge services can also involve aircraft changes between multiple flights on one side of the change point and one single flight on the other side. As with one-for-one change-of-gauge services, the carrier assigns a single flight number for the passenger's entire itinerary even though the passenger changes planes, but in addition, the single flight to or from the exchange point itself has multiple numbers, one for each segment with which it connects and one for the local market in which it operates.

The Department recognizes various public benefits that can flow from change-of-gauge services, such as a lowered likelihood of missed connections. However, although change-of-gauge flights can offer valuable consumer benefits, they can be confusing and misleading unless consumers are given reasonable and timely notice that they will be required to change planes during their journey.

Section 41712 of Title 49 of the U.S. code authorizes the Department to decide if a U.S. air carrier or foreign air carrier or ticket agent (including travel agents) has engaged in unfair or deceptive practices. Under this authority, the Department has adopted various regulations and policies to prevent unfair or deceptive practices or unfair methods of competition. The Department requires as a matter of policy that customers be given notice of aircraft changes for change-of-gauge flights. (See Department Order 89–1–31, page 5.) The Department proposed to adopt the extant regulations, however, because it was not convinced that these rules and policies resulted in effective disclosure all of the time.

Respondents: All U.S. air carriers, foreign air carriers, computer reservations systems (CRSs), and travel agents doing business in the United States, and the traveling public.

Estimated Total Annual Burden: Annual reporting burden for this data collection is estimated at 113,644 hours for all travel agents and airline ticket agents and 113,644 hours for air travelers, based on 15 seconds per phone call and an average of 1.5 phone calls per trip, for the approximately 33% of change-of-gauge itineraries that involve personal contact. Most of this data collection (third party notification) is accomplished through highly automated computerized systems.

Estimated Number of Respondents: 16,000, excluding travelers.

Estimated Time per Response: At 15 seconds per call and an average of 1.5 calls per trip, a total of 22.5 seconds per respondent or traveler, for the approximately 33% of change-of-gauge itineraries that involve personal contact.

Comments are invited on: (a) Whether this collection of information (third party notification) is necessary for the proper performance of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including through the use of automated techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Todd M. Homan,

Director, Office of Aviation Analysis.

[FR Doc. E8–20371 Filed 9–2–08; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Research, Engineering and Development Advisory Committee

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Public Law 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the FAA Research, Engineering and Development (R, E&D) Advisory Committee.

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of meeting.

Name: Research, Engineering & Development Advisory Committee.

Time and Date: September 24, 2008—9 a.m. to 5 p.m.

Place: Federal Aviation Administration, 800 Independence Avenue, SW.—Round Room (10th Floor), Washington, DC 20591

Purpose: The meeting agenda will include receiving from the Committee guidance for FAA's research and development investments in the areas of air traffic services, airports, aircraft safety, human factors and environment and energy. Attendance is open to the interested public but seating is limited. Persons wishing to attend the meeting or obtain information should contact Gloria Dunderman at (202) 267–8937 or *gloria.dundermanfaa.gov.* Attendees will have to present picture ID at the security desk and be escorted to the Round Room.

Members of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on August 22, 2008.

Barry Scott,

Director, Research & Technology Development.

[FR Doc. E8–20314 Filed 9–2–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Idaho

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions by FHWA and other Federal agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, SH–75 Timmerman Junction to Ketchum, Project No. STP–F–2392(035), Key No. 3077, in Blaine County, in the State of Idaho. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. § 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before March 2, 2009. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FHWA: Mr. Peter Hartman, Division Administrator, Federal Highway Administration, 3050 Lakeharbor Lane Suite 126, Boise, Idaho 83703; telephone (208) 334–1843, e-mail: *Idaho.FHWA@fhwa.dot.gov.* The FHWA Idaho Division Office's normal business hours are 8 a.m. to 4 p.m. (Mountain Time). For ITD: Mr. Mike Scott, Project Manager, Idaho Transportation Department, District 4, 216 S. Date Street, Shoshone, Idaho 83352; telephone: (208) 886–7806; e-mail: *mike.scott@itd.idaho.gov.* The ITD District 4 normal business hours are 8 a.m. to 5 p.m. (Mountain Time).

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions subject to 23 U.S.C. (l)(1) by issuing licenses, permits, and approvals for the following highway project in the State of Idaho: SH–75 from Timmerman Junction (US–20) to Saddle Road in the City of Ketchum. The project will reconstruct and widen approximately 26 miles of SH–75 within the described limits. This reconstruction will widen SH–75 to three, four, or five lanes through the corridor. The project will construct shoulders, curbs, sidewalks, bike lanes, and turn lanes through the corridor; also traffic signals or roundabouts will be constructed to improve safety and operation of various intersections throughout the corridor. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Impact Statement (FEIS) for the project, approved on March 5, 2008, in the FHWA Record of Decision (ROD) issued on August 13, 2008, and in other documents in the FHWA administrative record. The FEIS, ROD, and other documents in the FHWA administrative record file are available by contacting the FHWA or the Idaho Transportation Department at the addresses provided above. The FHWA FEIS can be viewed at public libraries in the project area. The ROD can be downloaded from the Idaho Transportation Department Web site at: *http://itd.idaho.gov/Projects/D4/Idaho75TimmermanToKetchum/default.asp.* This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

General Environmental Statutes

National Environmental Policy Act: 42 U.S.C. 4321–4335 (Pub. L. 91–190), (Pub. L. 94–83).

Section 4(f) of The Department of Transportation Act: 23 U.S.C. 138, 49 U.S.C. 303 (Pub. L. 100–17), (Pub. L. 97–449), (Pub. L. 86–670).

Economic, social, and environmental effects: 23 U.S.C. 109(h), (Pub. L. 91–605), 23 U.S.C. 128.

Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (42 U.S.C. 4601 et seq., Pub. L. 91–646) as amended by the Uniform Relocation Act Amendments of 1987 (Pub. L. 100–17)

Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) 23 U.S.C. 324; Americans with Disabilites Act (42 U.S.C. 12101) and related statutes

Executive Order 12898: Environmental Justice

Public hearings: 23 U.S.C. 128

Health

Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976: 42 U.S.C. 6901, et seq., especially 42 U.S.C. 6961–6964 (Pub. L. 89–272) (Pub. L. 91–512) (Pub. L. 94–580)

Historical and Archeological Preservation

Section 106 of the National Historic Preservation Act, as amended: 16 U.S.C. 470f (Pub. L. 89–665) (Pub. L. 91–243) (Pub. L. 93–54) (Pub. L. 94–422) (Pub. L. 94–458) (Pub. L. 96–199) (Pub. L. 96–244) (Pub. L. 96–515) (Pub. L. 102–575)

Section 110 of the National Historic Preservation Act, as amended: 16 U.S.C. 470H–2 (Pub. L. 96–515)

Archeological and Historic Preservation Act: 16 U.S.C. 469–469C (Pub. L. 93–291) (Moss-Bennett Act)

Archeological Resources Protection Act: 16 U.S.C. 470aa–11 (Pub. L. 96–95)

American Indian Religious Freedom Act: 42 U.S.C. 1996 (Pub. L. 95–341)

Native American Grave Protection and Repatriation Act: (Pub. L. 101–601) 25 U.S.C. 3001 et seq.

Land and Water Usage

Executive Order 11988: Floodplain Management, as amended by Executive Order 12148

Federal Water Pollution Control Act (1972), as amended by the Clean Water Act (1977 & 1987): 33 U.S.C. 1251–1376 (Pub. L. 92–500) (Pub. L. 95–217) (Pub. L. 100–4)

Wildflowers 23 U.S.C. 319 (B) (Pub. L. 100–17)

Farmland Protection Policy Act of 1981: 7 U.S.C. 4201–4209 (Pub. L. 97–98) (Pub. L. 99–198)

Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended: 42 U.S.C. 9601–9657 (Pub. L. 96–510) Superfund Amendments and Reauthorization Act of 1986: (SARA) (Pub. L. 99–499)

Endangered Species Act of 1973, as amended: 16 U.S.C. 1531–1543 (Pub. L. 93–205) (Pub. L. 94–359) (Pub. L. 95–632) (Pub. L. 96–159) (Pub. L. 97–304)

Intermodal Surface Transportation Efficiency Act of 1991 Sec. 1038 Recycled Paving Material: (Pub. L. 102–240)

Noise

Standards: 23 U.S.C. 109(i) (Pub. L. 91–605) (Pub. L. 93–87)

Air Quality

Clean Air Act (as amended), Transportation Conformity Rule: 23 U.S.C. 109 (j) 42 U.S.C. 7521 (a) (Pub. L. 101–549)

Intermodal Surface Transportation Efficiency Act of 1991. Congestion Mitigation and Air Quality Improvement Program (CMAQ): Sec 1008 23 U.S.C. 149.

(Catalog of the Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: August 27, 2008.

Peter J. Hartman,

Division Administrator, Federal Highway Administration—Boise, Idaho.

[FR Doc. E8–20352 Filed 9–2–08; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2008–0139]

Notice of Receipt of Petition for Decision That Nonconforming 2005–2006 Mercedes Benz SLK Class (171 Chassis) Passenger Cars Manufactured Between August 31, 2004 and August 31, 2006 Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2005–2006 Mercedes Benz SLK class (171 chassis) passenger cars manufactured between August 31, 2004 and August 31, 2006 are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2005–2006 Mercedes Benz SLK class (171 chassis) passenger cars manufactured between August 31, 2004 and August 31, 2006 that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS) are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S.-certified version of the 2005–2006 Mercedes Benz SLK class (171 chassis) passenger cars manufactured between August 31, 2004 and August 31, 2006,) and (2) they are capable of being readily altered to conform to the standards.

DATE: The closing date for comments on the petition is October 3, 2008.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

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

Instructions: Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

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

How to Read Comments Submitted to the Docket: You may read the comments received by Docket Management at the address and times given above. You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Federal Docket Management System (FDMS) Web page *http://www.regulations.gov.*

(2) On that page, click on ''Advanced Docket Search.''

(3) On the next page select ''NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION'' from the drop-down menu in the Agency field and enter the Docket ID number shown at the heading of this document.

(4) After entering that information, click on ''submit.''

(5) The next page contains docket summary information for the docket you selected. Click on the comments you wish to see. You may download the comments. 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 search the Docket for new material.

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 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.

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**.

Automobile Concepts, Inc. (''AMC''), of North Miami, Florida (Registered Importer 01–278) has petitioned NHTSA to decide whether nonconforming 2005–2006 Mercedes Benz SLK class (171 chassis) passenger cars manufactured between August 31, 2004 and August 31, 2006 are eligible for importation into the United States. The vehicles which AMC believes are substantially similar are 2005–2006 Mercedes Benz SLK class (171 chassis) passenger cars manufactured between August 31, 2004 and August 31, 2006 that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner claims that it compared non-U.S. certified 2005–2006 Mercedes Benz SLK class (171 chassis) passenger cars manufactured between August 31, 2004 and August 31, 2006 to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most FMVSS.

AMC submitted information with its petition intended to demonstrate that non-U.S. certified 2005–2006 Mercedes Benz SLK class (171 chassis) passenger cars manufactured between August 31,

2004 and August 31, 2006, as originally manufactured, conform to many FMVSS in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2005–2006 Mercedes Benz SLK class (171 chassis) passenger cars manufactured between August 31, 2004 and August 31, 2006 are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect*, 103 *Windshield Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems,* 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch System*, 116 *Motor Vehicle Brake Fluids*, 124 *Accelerator Control Systems*, 135 *Passenger Car Brake Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 212 *Windshield Mounting*, 214 *Side Impact Protection*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 225 *Child Restraint Anchorage Systems*, and 302 *Flammability of Interior Materials.*

In addition, the petitioner claims that the vehicles comply with the Bumper Standard found in 49 CFR Part 581.

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Inscription of the word ''brake'' on the dash in place of the international ECE warning symbol; (b) replacement of the speedometer with a unit reading in miles per hour, or modification of existing speedometer so that it reads in miles per hour; and (c) installation or activation of U.S.-version software in the vehicle's computer system.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model sidemarker lamps and headlamps; and (b) inspection of all vehicles and installation, on vehicles that are not already so equipped, of U.S.-model components to meet the requirements of this standard.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirrors:* installation of a U.S.-model passenger side rearview mirror, or inscription of the required warning statement on the face of that mirror.

Standard No. 114 *Theft Protection:* installation of a supplemental key warning buzzer, or installation or activation of U.S.-version software to meet the requirements of this standard.

Standard No. 118 *Power-Operated Window, Partition, and Roof Panel Systems:* installation or activation of U.S.-version software in the vehicle's computer system to meet the requirements of this standard.

Standard No. 208 *Occupant Crash Protection:* inspection of all vehicles and replacement of any non U.S.-model seat belts, air bag control units, air bags, and sensors with U.S.-model components on vehicles that are not already so equipped; and (b) installation or activation of U.S.-version software to ensure that the seat belt warning system meets the requirements of this standard.

The petitioner states that the crash protection system used in these vehicles consists of dual front airbags and combination lap and shoulder belts at the front outboard seating positions. The seat belt systems are described as self-tensioning and capable of being released by means of a single red push-button.

Standard No. 209 *Seat Belt Assemblies:* inspection of all vehicles and replacement of any non U.S.-certified model seat belts with U.S.-model components.

Standard No. 210 *Seat Belt Assembly Anchorages:* inspection of all vehicles and replacement of any non U.S.-model seat belts anchorage components with U.S.-model components.

Standard No. 301 *Fuel System Integrity:* inspection of all vehicles and replacement of any non U.S.-model fuel system components with U.S.-model components.

Standard No. 401 *Interior Trunk Release:* inspection of all vehicles and installation of U.S.-model components on vehicles that are not already so equipped.

The petitioner additionally states that a vehicle identification plate must be affixed to the vehicles near the left windshield post to meet the requirements of 49 CFR Part 565.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above addresses both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 27, 2008.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. E8–20397 Filed 9–2–08; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition

AGENCY: National Highway Traffic Safety Administration, (NHTSA), Department of Transportation.

ACTION: Denial of a petition for a defect investigation.

SUMMARY: This notice sets forth the reasons for the denial of a petition (Defect Petition DP08–001) submitted by Mr. William Kronholm to NHTSA's Office of Defects Investigation (ODI) by letter dated January 10, 2008, under 49 U.S.C. 30162. The Petition requests that the agency commence a proceeding to determine the existence of a defect related to motor vehicle safety within the electronically actuated throttle control system that is allegedly causing sudden and uncontrolled acceleration in model year (MY) 2006 to 2007 Toyota Tacoma pickup trucks (vehicles).

After conducting a technical review of the material cited and provided by the petitioner and other information, and taking into account several considerations, including, among others, allocation of agency resources, agency priorities, and the likelihood that additional investigation would result in a finding that a defect related to motor vehicle safety exists, NHTSA has concluded that further investigation of the issues raised by the petition is not warranted. The agency accordingly has denied the petition.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Yon, Vehicle Control Division, Office of Defects Investigation, NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone 202–366–0139.

SUPPLEMENTARY INFORMATION:

I. Introduction

Interested persons may petition NHTSA requesting that the agency initiate an investigation to determine whether a motor vehicle or item of replacement equipment does not comply with an applicable Federal motor vehicle safety standard or contains a defect that relates to motor vehicle safety. 49 CFR 552.1. Upon receipt of a properly filed petition, the agency conducts a technical review of

the petition, material submitted with the petition, and any additional information. § 552.6. After considering the technical review and taking into account appropriate factors, which may include, among others, allocation of agency resources, agency priorities, and the likelihood of success in litigation that might arise from a determination of a noncompliance or a defect related to motor vehicle safety, the agency will grant or deny the petition. § 552.8.

II. Defect Petition Background Information

The Petitioner, Mr. William Kronholm of Helena, Montana, purchased a new model year (MY) 2006 Toyota Tacoma pickup (VIN 5TEUU42N26Z258969, Petitioner's vehicle) on May 10, 2006. The vehicle is equipped with a V6 engine (4.0 L, 1GR–FE), five speed automatic transmission, air conditioning (A/C), cruise control, antilock brakes (ABS), limited slip rear differential, and four-wheel drivetrain (4WD), and was manufactured in April 2006. The Petitioner's vehicle is also equipped with an electronically actuated throttle control system.[1] The Petitioner is the primary driver of the Petitioner's vehicle and he drove the vehicle for approximately 24,500 miles without experiencing a problem with the throttle control system.

On the morning of January 5, 2008, the Petitioner and his wife drove the vehicle to a cross-country skiing area about 100 miles from their home. After skiing several hours, they returned home on Rt. 141. During the return trip, the Petitioner pulled off the road and stopped briefly at the intersection with Rt. 271. The transmission was placed in Park and the engine was left running.

When the Petitioner was ready to resume the trip south on Rt. 141, he engaged Drive and allowed the vehicle to move forward under its own power (without accelerator pedal application). As he approached the intersection, and while braking and checking for oncoming traffic, he sensed that the vehicle was not slowing as expected from the brake application.[2] He struggled with the vehicle for about 10 seconds, continuing to press on the brake, before regaining control of the vehicle. By this time the vehicle had moved about 7 to 10 meters beyond where the Petitioner had intended to stop, coming to rest in the southbound lane of Rt. 141. He was alarmed by the event and wasn't quite sure what had happened. However, he could not identify a specific problem with his vehicle, so he continued driving.

When the Petitioner arrived at his home, he began to back the vehicle into his short driveway.[3] While steering the vehicle into the driveway and using the brake to regulate the vehicle speed, the Petitioner reports that the vehicle began to accelerate suddenly in the rearward direction. He applied the brakes forcefully, which slowed the vehicle,[4] but he was concerned that he was nearing the garage door. He concluded that his vehicle was out of control and, fearing a crash, he turned the ignition switch off. He estimates the duration of this event was approximately 10 seconds. He subsequently restarted the vehicle and it operated normally.

Due to the similarity with his earlier incident, and since both incidents had occurred within a two hour period, he suspected that a defect with his vehicle was the likely cause. He conducted some research, including finding some related news articles and news broadcasts via Web research that reported similar occurrences on other MY 2006 and 2007 Tacoma vehicles. He also found the NHTSA Web site, where he filed his Vehicle Owner Questionnaire (VOQ) report (ODI 10214130) and conducted a VOQ search for other Tacoma reports similar to his. His search identified a number of reports for MY 2006 and 2007 Tacoma vehicles that he considered similar to the incidents he had experienced, as well as a small number of reports for peer vehicles (non-Toyota) of similar age, usage, and design type.

The Petitioner took his Tacoma to a local Toyota dealer on January 7, 2008, advised it of the two incidents he had experienced, and requested that they inspect the vehicle for a potential problem or defect that caused the unintended accelerations. The dealership tested the vehicle, inspected the air intake, throttle and accelerator pedal wiring, and checked for any stored diagnostic codes or service messages in the engine control unit. The dealer also checked for any pertinent bulletins or ''health'' updates. The dealer could not duplicate the unintended acceleration, no codes were stored and no bulletins or updates were available. No repairs were made and the vehicle was returned to the Petitioner.

The Petitioner filed a Defect Petition (DP) with NHTSA that was received in NHTSA on January 18, 2008. The petition identified his previous VOQ and discussed his research on Tacoma and peer vehicle VOQs with throttle control complaints. He requested that NHTSA open an investigation into sudden and uncontrolled acceleration on the MY 2006 and 2007 Toyota Tacoma vehicles. In a letter to Toyota dated January 25, 2008, the Petitioner described the two ''spontaneous and uncommanded sudden acceleration incidents in the span of less than two hours'' and the results of his search for related complaints on the NHTSA Web site. The letter takes issue with Toyota's response to his and other complaints of sudden acceleration and requests that Toyota conduct a ''full and complete investigation of the defect'' in his Tacoma.[5]

ODI contacted the Petitioner on January 24, 2008, to advise that we received his petition. During this call, ODI staff briefly reviewed the specifics of the two incidents the Petitioner reported and requested that he provide the ODI numbers of the reports he identified in his petition for both the Toyota and non-Toyota vehicles. During this conversation, the Petitioner confirmed his assessment that during both incidents, his vehicle's brake system had functioned properly and that the cause of the incidents was a failure of the throttle control system, specifically that the throttle control system opened the throttle without accelerator pedal application. In other words, the vehicle self-accelerated. In his opinion, this acceleration made the vehicle difficult to control and unsafe to operate.

The Petitioner provided a list of 37 VOQ reports via e-mail, 33 for Toyota Tacoma, including the Petitioner's report ODI 10214130, and four for non-Toyota pickups.[6] The Toyota Tacoma reports included 16 reports on MY 2006 and 17 reports on MY 2007 Tacoma. ODI notes that two reports (10180652 and 10181486) were submitted by the

[1] The design of the Tacoma throttle control system is similar to that reviewed in PE04–021. Interested persons can refer to this investigation for more information on the basic design and operation of the system.

[2] His wife also recognized that the vehicle was not stopping as she had expected, or that something was wrong, and she asked her husband what was going on.

[3] There is a slight grade that would allow the vehicle to reverse without accelerator application.

[4] The Petitioner states his vehicle's rear wheels were spinning freely as he recalls hearing the sound of gravel hitting the inside of the rear wheel wells.

[5] See *http://www.safercar.gov* under VOQ report ODI 10214130 to view the 1/25/2008 letter.

[6] ODI numbers for MY 2006 Tacoma: 10152011, 10172030, 10183012, 10184332 (Canadian vehicle), 10184375, 10184416, 10184759, 10185253, 10186996, 10191371, 10201595, 10202727, 10211100, 10212718, 10214130, 10215598. For MY 2007 Tacoma: 10180652, 10181411, 10181486 (same complainant as 10180652), 10182045, 10187789, 10197535, 10198196, 10199820, 10201655, 10202283, 10207528, 10208120, 10208868, 10208890, 10212294, 10212602, 10212656. For non-Toyota products: 10166548, 10183144, 10199048, 10203722.

same complainant, and one (10184332) was submitted by a Canadian consumer.

In response to the petition, ODI opened Defect Petition (DP) 08–001 on January 31, 2008. ODI sent an Information Request (IR) letter to Toyota on February 8, 2008, with a response due date of March 28, 2008. The IR letter sought information relating to a range of potential consumer complaints and defined the MY 2004 [7] to 2008 Tacoma models as the subject vehicles.[8] Toyota requested and was granted extensions to the original response date, with partial submissions made on the agreed upon dates, and the submission was completed on April 25, 2008.[9] Toyota also conducted a technical meeting with ODI on May 21, 2008.

III. NHTSA Review—VOQ Data

ODI began its assessment of the petition by attempting to contact each of the persons who had submitted a VOQ report on a Tacoma, as identified by the Petitioner. We interviewed 26 of the 31 consumers.[10] In the interviews, consumers described events that could be attributed to a throttle control system issue. Their concerns stemmed from a variety of vehicle operating conditions and driving circumstances. Some owners described events similar to the Petitioner's allegations, in that unintended acceleration occurred on vehicles equipped with an automatic transmission while slowing or stopped. Other complainants described unintended acceleration that was minor in comparison to the events that the Petitioner described. Other owners described events that varied significantly from what the Petitioner reported. For example, some consumers described events that occurred on manual transmission vehicles at highway speeds when the clutch was depressed, while others reported that a condition only occurred after the accelerator pedal had been depressed significantly (intentionally) or only when the cruise control or A/C system was engaged. Some consumers reported events occurring when more than one of these conditions was present.

After the initial interviews, ODI elected to expand its analysis to include a broader representation of Tacoma reports in the VOQ complaint database. Noting that the DP subject vehicles were of a consistent design type (generation) from MY 2005 through MY 2008,[11] we searched the complaint database to identify all reports potentially involving the throttle control system for MY 2005 and later Tacoma vehicles. Table 1 shows the number of Tacoma VOQ reports, by MY, that include an allegation possibly related to the throttle control system. We attempted to interview each person who submitted a report. We have interviewed 64 of these 97 consumers (about 66%).

TABLE 1—UNIQUE TACOMA THROTTLE CONTROL SYSTEM COMPLAINTS, THROUGH 5/31/2008

MY	2005	2006	2007	2008	Totals
Complaints	18	36	38	5	97

As shown in Table 1, there were fewer reports for MY 2005 Tacoma reports than for MY 2006 and 2007. When vehicles share a common design configuration over more than one model year, there typically tends to be higher rates of reports on the older vehicles than the newer ones. The trend found here may reflect an abnormal variability or another factor such as more recent publicity.

Based on the report descriptions and the interviews conducted, ODI separated the consumer complaints into (1) those that may involve the throttle control system, (2) those that did not relate to the throttle control system (or that relate to a different system or component), and (3) those that we could not categorize, often because of limited information. The analysis revealed that some VOQs implicate more than one of the above issues, resulting in a total of 104 discrete complaints in these three categories.

Of the 104 complaints, 59 relate or may relate to the throttle control system. These complaints include allegations of high idle speed on cold start; short duration (less than one second), small magnitude vehicle surges while the vehicle is at rest and in gear (possibly related to A/C system operation); excessive engine speed and transmission downshifts when the cruise control is engaged and the vehicle encounters an uphill grade; and failure of the engine to return to ''idle'' in a normal manner while at highway speeds when the clutch is depressed for shifting (termed by Toyota as ''catalyst protection'').

Regarding the vehicle's throttle control system, we note that NHTSA's Office of Vehicle Safety Compliance (OVSC) conducted testing on a MY 2007 Tacoma for compliance with Federal Motor Vehicle Safety Standard (FMVSS) No. 124, Accelerator Controls in September 2007. In a November 23, 2007, report, OVSC indicated that the Tacoma throttle control system is compliant with the requirements set forth in FMVSS No. 124.[12] OVSC completed this testing prior to the opening of DP08–001.

Of the 59 complaints that may be related to the vehicle's throttle control system, two of the complaints (about three percent) related to high idle speed on cold start. None of these reports allege a crash or injury. NHTSA's Vehicle Research and Test Center (VRTC) conducted testing to compare two MY 2008 Tacoma (four- and six-cylinder engines with automatic transmissions) to 15 other non-Tacoma vehicles. The objective was to determine the engine RPM and the sustaining brake pedal force (effort required to maintain a stationary position) during cold start.[13] For the vehicles tested, the Tacoma idle speeds and pedal forces were both above the average of the 17 vehicles tested but within the range of values measured.

Thirty-seven of the 59 complaints (about 63 percent) related to a short duration, small magnitude vehicle surge increase while the vehicle is at rest and in gear. None of these reports allege a crash or injury. In assessing the safety consequence of these at-rest surge complaints, we note first that these events occur only on vehicles equipped with automatic transmissions. Like many other vehicles, the Tacoma idle speed varies depending on whether the A/C compressor is engaged. We note also that the A/C compressor operates

[7] The MY 2004 vehicles are an earlier design version that used different engines and body style.

[8] This was done to ensure a comprehensive sample of the types of complaints Toyota received.

[9] Some portions of the response were submitted with a request for confidentiality.

[10] The five remaining consumers failed to respond to requests for an interview, or could not be contacted.

[11] At MY 2005, the Tacoma vehicle line underwent a major design revision from the MY 2004 vehicle, with a new body style and powertrain being introduced.

[12] See *http://nhthqnwws111.odi.nhtsa.dot.gov/acms/docservlet/Artemis/Public/OVSC/2007/Test%20Reports/TRTR–639126–2007.PDF* for vehicle specification, test results, and details on obtaining more information.

[13] This work was completed prior to the opening of DP08–001 also.

when the front windshield defroster is enabled, regardless of the state of the A/C compressor switch.

In our IR to Toyota, we asked the company to explain the functionality of the Tacoma A/C system and how it affects the idle speed. According to Toyota's response, there is a modest increase in idle speed when the AC compressor engages. With this functionality, it is possible for the vehicle to inch forward if, after it is stopped and in gear, the driver applies only enough braking to prevent the vehicle from rolling forward under normal conditions without the A/C engaged and the A/C compressor subsequently engages. However, a small additional brake force suppresses this forward movement.

Some of these 37 consumers, typically those with 4WD, reported that within about five seconds after stopping the vehicle, they experienced a surge that felt like a sharp jolt in the vehicle as though a following driver had tapped the rear bumper (some consumers reported looking in the rearview mirror to see if this was the case). The duration of the jolt was very short (< 1 second), would occur only once per stop, and occurred randomly—perhaps on a weekly basis or less frequently. Consumers did not report a simultaneous change in engine speed, so it is unclear if this issue involves the vehicle's throttle control system.[14] We were not able to simulate this event on a vehicle. However, to the extent that these events could be related to the throttle control system, we note that consumers reported they easily controlled vehicle movement with normal brake force.

Eleven of the 59 complaints (about nineteen percent) involve excessive engine speed and transmission downshifts when the cruise control is engaged and the vehicle encounters an uphill grade. None of these reports allege a crash or injury. We note that this occurs only on vehicles equipped with automatic transmissions and cruise control, and that it appears to be more prevalent on the four cylinder models. We identified VOQ report ODI 10183271 that provided detailed information regarding this issue. The report states that while on the interstate with the cruise control engaged and set within a speed range of about 65 to 75 miles per hour, if the vehicle encounters an uphill grade, the vehicle will first downshift to a lower gear, then apply additional throttle, resulting in the engine revving to a high RPM.[15] The VOQ alleges that the combined effect of downshifting then opening the throttle can cause a yaw or loss of control condition and that a crash could result, and that a near crash incident occurred on one occasion.[16]

We interviewed this consumer[17] and discussed the results of testing conducted on his vehicle by a local Toyota dealer. He provided a description of what he learned from Toyota's testing, and agreed to allow us to inspect his vehicle. We met with him on March 12, 2008, and test drove the vehicle on local interstates where he had previously experienced the alleged event. We connected a commercially available test device to the vehicle's diagnostic connector to monitor throttle and transmission data. We confirmed that when the vehicle cruise control is set to a specific speed range and it encounters an incline, the transmission will downshift to second gear and the engine will rev to a high RPM. However, we could not confirm that the transmission downshift preceded the throttle application. To the contrary, the data showed that the transmission downshift was in response to throttle opening, similar to what would occur if the operator were to manually apply the accelerator pedal under similar circumstances (same speed range, on an incline). We do not perceive a significant safety risk related to this phenomenon.

Nine of the 59 complaints (about 15 percent) relate to an alleged failure of the engine to return to ''idle' in a normal manner while at highway speeds when the clutch is depressed for shifting (what Toyota describes as catalyst protection). One of these reports alleges a crash with no injury, as discussed below. We note first that this event only occurs on vehicles equipped with four cylinder engines and manual transmission. The condition is typically described in reports as a failure of the engine to return to normal idle speed and an increase in engine speed that occurs when the clutch is depressed while shifting from 4th to 5th gear (see ODI 10150731, 10157923, 10175527, and 10208505).

In its IR response, Toyota described the system used on four cylinder vehicles to protect the long-term durability of the catalytic converter, a component of the emissions control system. Toyota reported that under certain operating conditions and when the accelerator pedal is not being depressed (i.e., an overrun condition), the vehicle's catalytic converter can be damaged if there is inadequate air flow through the engine. In simplified terms, the throttle control system opens the throttle without driver input to provide a minimal airflow through the engine. This can produce a temporary elevated idle speed if the clutch is depressed. However, according to Toyota's IR response, the air flow increase by the throttle control system is limited so that it does not result in a net power output to the vehicle. Toyota advised that while increased air flow diminishes engine braking (deceleration caused by engine drag in an overrun condition), it cannot produce vehicle acceleration.

VRTC testing of a MY 2006 Tacoma equipped with a four cylinder engine and manual transmission verified that the catalyst protection feature operated as Toyota described.[18] We confirmed that the strategy is only implemented when the transmission is in 4th or 5th gear and note that when the clutch was depressed we observed free-wheel engine speeds as high as 3,000 RPMs. However, at the road speeds where this occurred (60 to 75 MPH), and with the limited amount of airflow involved, the effect on vehicle control, though perhaps annoying to consumers, did not appear to be consequential.

One VOQ report (ODI 10152011) alleged that this operation caused the operator to lose control of his vehicle and crash on a rural/semi-urban Colorado roadway. However, the road was snow-covered at the time of the crash. Based on the information in the report, the vehicle was travelling at a high speed when the crash occurred (70 MPH on a snow-covered rural/semi-urban road). Since speed and road conditions may have been a factor, the incident described in this report is of little probative value with regard to the alleged defect described in the petition.

Beyond the 59 reports, ODI identified 19 reports that did not relate to the throttle control system, or that relate to a different system or component. Fourteen of these appear to have been caused by floor mat interference with the accelerator pedal, including 4 crashes and 3 injuries. The other five reports were related to dual pedal application, where the operator inadvertently depresses both the

[14] Some consumer's have alleged that the vehicle's drivetrain or suspension causes the condition.

[15] He states that he met with a Toyota technical representative and observed the results of test work they conducted. The consumer claims that the test results verified the system operated in the manner described in his report, though he did not obtain copies of the test results.

[16] See the VOQ report ODI 10183271 for details of the near loss of control incident that was alleged.

[17] The complainant is an engineer who owns a four cylinder Tacoma with automatic transmission.

[18] Also, Toyota demonstrated this system to ODI during the May 21, 2008, technical meeting.

accelerator pedal and the brake pedal when intending to apply the brake only. One of these reports alleges a minor crash with no injury (ODI 10221144). These five complaints involve vehicles equipped with automatic transmissions. When dual pedal application occurs, the vehicle moves forward further than the driver intends. During ODI interviews, complainants reported that they had inadvertently applied both the brake and gas pedals at the same time. Three complainants determined this prior to filing VOQs (ODI 10210488, 10221144, and 10223599), one concluded it after filing and disclosed it during the interview (ODI 10208868), and one mentioned that this may have been a factor during our interview (ODI 10198196). To the extent that causes are identified that are not related to the electronic throttle control system but which may raise possible safety defect issues, such as floor mat interference or pedal placement, ODI will continue to examine them as part of our regular screening process and will open investigations if warranted.

In a few reports, consumers questioned the design of the pedal configuration, suggesting that the pedals were too close to one another (lateral separation) or that there was insufficient step-over [19] clearance. We note that, dimensionally speaking, the pedal configuration of the MY 2005 to 2008 Tacoma is typical of other light trucks and passenger vehicles. Some complainants noted that they had been wearing larger or stiffer than usual shoes, such as work boots, when the dual pedal application occurred, and they reported that this was a factor in the occurrence.

Related to this topic, ODI interviewed the Petitioner and inspected his Tacoma at his home on March 26, 2008. In an earlier interview, the Petitioner advised that he was wearing his cross-country ski boots (shoes) when his two incidents occurred, so we took this opportunity to look at them. The cross country ski shoes (Merrell brand, men's size 9½), unlike down-hill ski boots, are similar in size and width to a work boot with the exception of an extension at the toe of the boot that acts as a binding for the ski. The binding is of the same thickness as the sole of the shoe and it extends forward (outward) from the shoe about ⅝ of an inch. During a test drive, we noted that the Petitioner used his right foot to operate the brake and gas pedal, and that he lifts and relocates his foot when he transitions from one pedal to another.[20]

Considering that the shoes may have played a role in his incidents, we discussed the issue of dual pedal application with the Petitioner. He noted that he skied two to three times per year, that he typically drove with his ski shoes on to save time at the ski facility, and that he had never had a problem before. Additionally, he noted that he had made this same trip using the Tacoma a few times the prior ski season without incident. We asked the Petitioner to assess the vehicle with his ski shoes on to see if he could apply both pedals at the same time and to advise us of his findings. He subsequently reported that it was possible for him to inadvertently hit both pedals while wearing the ski shoes but that his foot had to be in an abnormal orientation for this to occur, one that would be plainly obvious to him. In his estimation this was not the cause of his two incidents.

Finally, for the remaining 26 complaints, these are reports where we have assessed the available information from the complainants, yet we are unable to identify a cause that may be related to the vehicle's throttle control system or, in many cases, any specific cause or explanation. These reports allege 13 crashes with four injury allegations (one minor, two moderate, one severe). In some cases, the VOQ was inconclusive and the consumer filing the VOQ could not be contacted for an interview. However, in no instances did the complainants report or allege a specific component failure or replacement, the illumination of a warning indicator, the detection of a stored trouble or fault code, or the identification of any other physical evidence supporting a vehicle-based problem. The incidents occur randomly and are therefore unable to be reproduced for testing or further analysis.[21]

IV. NHTSA Review—Toyota IR Response Data

ODI reviewed the information Toyota provided in its IR response for the MY 2005 to 2008 vehicles.22 We reviewed the population data and provide the number of vehicles by MY and transmission type in Table 2.

TABLE 2—VEHICLE POPULATION BY MY AND TRANSMISSION TYPE

	2005	2006	2007	2008*	Totals
Auto	111,625	152,727	134,665	83,828	482,845
Manual	40,013	42,441	31,156	19,105	132,715
Totals	151,638	195,168	165,821	102,933	615,560

*—partial MY.

We reviewed Toyota's responses to several other questions to ensure we fully understood any product or design changes, the studies of issues relevant to the alleged defect conducted by Toyota, the design and operation of the systems that interact with the throttle control system, and Toyota's assessment of the possible problem with the Tacoma throttle control system. We did not identify any information indicating a product- or component-based issue that could explain or cause a throttle control system failure.

We conducted a limited review of the responses to questions regarding the complaint and warranty data. Our review of the field report, legal claim,[23] and warranty claim data did not identify any concern or trend. We also conducted an analysis of the consumer complaints as described below. Table 3 shows the count of consumer complaints by MY.

[19] This is the difference in the height (distance) of the pedals from the floor board.

[20] The toe of the Petitioner's foot is oriented to the right of his heel when he applies either the brake or gas pedal.

[21] As an example of the type of analysis possible, for the Petitioner's vehicle, we have interviewed the Petitioner (multiple times), interviewed his wife (she was a passenger for one of the incidents), conducted a physical inspection of the Petitioner's vehicle, reviewed the Petitioner's vehicle service and warranty history, test driven the Petitioner's vehicle, and monitored the Petitioner's vehicle diagnostic/control system using a commercially available diagnostic tool; the Petitioner's vehicle has not exhibited another incident as of this date.

[23] The legal claims were duplicative of the consumer reports, which were also reviewed.

TABLE 3—CONSUMER COMPLAINT COUNTS BY MY FROM TOYOTA'S IR RESPONSE

	2005	2006	2007	2008	Total
Consumer Complaints	176	167	90	13	446

We based our review of the Toyota consumer complaints on the information provided in the IR response. We first note that the trend we saw in the VOQ data—that the MY 2006 and 2007 vehicles were over-represented (or MY 2005 was under represented)—does not appear in the consumer complaint data submitted by Toyota. In fact, Toyota's consumer complaint data do not suggest any identifiable reporting trend for any MY(s).

In reading the consumer complaint reports, we noted most were similar to the complaints identified in the VOQ reports. Accordingly, we followed the same approach used for VOQ reports and conducted an analysis of a random sample of consumer complaints. We reviewed 133 reports [24] from MYs 2005 to 2008 and identified 142 separate complaint types. ODI categorized 96 (about 68%) of the complaints as potentially related to the vehicle's throttle control system, 23 (about 16%) as not related to the throttle control system (or related to a different system or component), and 23 (about 16%) as not permitting us to identify a cause that relates to the vehicle's throttle control system.[25] These proportions are similar to the VOQ analysis.

For the crashes and injuries reported in the Toyota IR response, we reviewed the reports for the MY 2006 and 2007 Tacoma (since these were the subject of the DP request) where a crash or injury was alleged. From these reports, we identified 33 unique incidents. Eight of these incidents, with three injuries, were duplicates of reports to ODI that we had reviewed. For the remaining 25 reports unique to the Toyota response, we determined that four reports, with no injuries, fell outside the scope of the alleged defect (these involved brake system or other unrelated issues), two involved dual pedal application errors, and six involved other issues not related to the throttle control system. For the remaining 13 crash allegations, with one injury allegation, we were unable to make an assessment of the underlying cause of the crash.[26]

Conclusion

ODI's review of the petition, assessment of VOQs, interviews of persons who filed VOQs, testing, and review of Toyota's IR response reveals that about three-quarters of the complaints involved various explained aspects of the Tacoma's throttle control system that do not seem to present a significant safety risk under most circumstances, or did not involve a failure of the throttle control system. For the remaining quarter, although there may have been an issue with the throttle control system as one possible explanation, we have been unable to determine a throttle control related or any underlying cause that gave rise to the complaint. For those vehicles where the throttle control system did not perform as the owner believes it should have, the information suggesting a possible defect related to motor vehicle safety is quite limited. In our view, additional investigation is unlikely to result in a finding that a defect related to motor vehicle safety exists with regard to the Tacoma's throttle control system or a NHTSA order for the notification and remedy of a safety-related defect as alleged by the petitioner at the conclusion of the requested investigation. Therefore, in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, the petition is denied. This action does not constitute a finding by NHTSA that a safety-related defect does not exist. The agency will take further action if warranted by future circumstances.

Authority: 49 U.S.C. 30162(d); delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 25, 2008.

Daniel C. Smith,

Associate Administrator for Enforcement.

[FR Doc. E8–19994 Filed 9–2–08; 8:45 am]

BILLING CODE 4910–59–P

[24] We actually reviewed 143 reports but deemed 10 reports fell outside the scope of the alleged defect.

[25] As with the VOQ reports, these consumer complaints did not contain evidence of a vehicle causation but were simply allegations that the vehicle had suffered a throttle control system-related incident. Based on this analysis, we estimate that of the 257 MY 2006 and 2007 Toyota consumer complaints, about 40 would be in this category. This number will be reflected as the manufacturer failure counts in the closing resume for DP08–001.

[26] None of the 25 reports contained any specific evidence of a failure of the throttle control system.

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease of VA Property for the Improvement and Operation of the Memorial Stadium at the Department of Veterans Affairs Medical Center, Chillicothe, OH

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of Intent To Enter into an Enhanced-Use Lease.

SUMMARY: The Secretary of the Department of Veterans Affairs (VA) intends to enter into an enhanced-use lease of approximately 4.273 acres of underutilized land and improvements at the VA Medical Center in Chillicothe, Ohio. The selected lessee will finance, preserve, improve, design, build, operate, manage and maintain the property, which includes the VA Memorial Stadium and its accessory facilities (e.g., bleachers, dressing rooms, concession buildings, playground, and a grassy area adjacent to the stadium). As consideration for the lease, the lessee will be required to make annual capital improvements, pay VA fair market annual rent, and allow VA to use the stadium at no cost for mission-related events at least 5 times annually during the lease term. The value of the consideration meets or exceeds the net present value of the property to be leased.

FOR FURTHER INFORMATION CONTACT: Edward Bradley, Office of Asset Enterprise Management (044C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7778 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Title 38 U.S.C. 8161 *et seq.* states that the Secretary may enter into an enhanced-use lease if he determines that implementation of a business plan proposed by the Under Secretary for Health for applying the consideration under such a lease for the provision of medical care and services would result in a demonstrable improvement of services to eligible veterans in the geographic service-delivery area within which the property is located. This project meets this requirement.

Approved: July 17, 2008.

James B. Peake,

Secretary of Veterans Affairs.

[FR Doc. E8–20373 Filed 9–2–08; 8:45 am]

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Federal Register

Wednesday,
September 3, 2008

Part II

Department of Housing and Urban Development

Statutorily Mandated Designation of Difficult Development Areas and Qualified Census Tracts for 2009; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5235–N–01]

Statutorily Mandated Designation of Difficult Development Areas and Qualified Census Tracts for 2009

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: This document designates ''Difficult Development Areas'' (DDAs) for purposes of the Low-Income Housing Tax Credit (LIHTC) under section 42 of the Internal Revenue Code of 1986 (the Code) (26 U.S.C. 42). The United States Department of Housing and Urban Development makes new DDA designations annually. The designations of ''Qualified Census Tracts'' (QCTs) under section 42 of the Internal Revenue Code published September 28, 2006, remain in effect.

FOR FURTHER INFORMATION CONTACT: For questions on how areas are designated and on geographic definitions, contact Michael K. Hollar, Senior Economist, Economic Development and Public Finance Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 8234, Washington, DC 20410–6000; telephone number (202) 402–5878, or send an e-mail to *Michael.K.Hollar@hud.gov*. For specific legal questions pertaining to section 42, contact Branch 5, Office of the Associate Chief Counsel, Passthroughs and Special Industries, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224; telephone number (202) 622–3040, fax number (202) 622–4451. For questions about the ''HUB Zones'' program, contact Michael P. McHale, Assistant Administrator for Procurement Policy, Office of Government Contracting, Small Business Administration, 409 Third Street, SW., Suite 8800, Washington, DC 20416; telephone number (202) 205–8885, fax number (202) 205–7167, or send an e-mail to *hubzone@sba.gov*. A text telephone is available for persons with hearing or speech impairments at 202–708–8339. (These are not toll-free telephone numbers.) Additional copies of this notice are available through HUD User at 800–245–2691 for a small fee to cover duplication and mailing costs.

Copies Available Electronically: This notice and additional information about DDAs and QCTs are available electronically on the Internet at *http://www.huduser.org/datasets/qct.html*.

SUPPLEMENTARY INFORMATION:

This Document

This notice designates DDAs for each of the 50 states, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands. The designations of DDAs in this notice are based on final Fiscal Year (FY) 2008 Fair Market Rents (FMRs), FY2008 income limits, and 2000 Census population counts, as explained below. This notice also lists those areas treated as DDAs under the Gulf Opportunity Zone Act of 2005 (GO Zone Act) (Pub. L. 109–135; the GO Zone Act, as amended by the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007). Specifically, the GO Zone Act provides that areas ''determined by the President to warrant individual or individual and public assistance from the federal government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act)'' as a result of Hurricanes Katrina, Rita, or Wilma: (1) Shall be treated as DDAs designated under subclause (I) of Internal Revenue Code section 42(d)(5)(C)(iii) (i.e., areas designated by the Secretary of Housing and Urban Development as having high construction, land, and utility costs relative to area median gross income (AMGI)), and (2) shall not be taken into account for purposes of applying the limitation under subclause II of such section (i.e., the 20 percent cap on the total population of designated areas). The designations of QCTs under section 42 of the Internal Revenue Code (Code) published September 28, 2006 (71 FR 57234) remain in effect.

2000 Census

Data from the 2000 Census on total population of metropolitan areas and nonmetropolitan areas are used in the designation of DDAs. The Office of Management and Budget (OMB) first published new metropolitan area definitions incorporating 2000 Census data in OMB Bulletin No. 03–04 on June 6, 2003, and has updated them periodically, including most recently, in OMB Bulletin No. 07–01 on December 18, 2006. The FY2008 FMRs and FY2008 income limits used to designate DDAs are based on these new metropolitan statistical area (MSA) definitions, with modifications to account for substantial differences in rental housing markets (and, in some cases, median income levels) within MSAs.

Background

The U.S. Department of the Treasury (Treasury) and its Internal Revenue Service (IRS) are authorized to interpret and enforce the provisions of the Code, including the LIHTC found at section 42 of the Code. The Secretary of HUD is required to designate DDAs and QCTs by section 42(d)(5)(C) (redesignated section 42(d)(5)(B) by the Housing and Economic Recovery Act of 2008) of the Code. In order to assist in understanding HUD's mandated designation of DDAs and QCTs for use in administering section 42, a summary of the section is provided. The following summary does not purport to bind Treasury or the IRS in any way, nor does it purport to bind HUD, since HUD has authority to interpret or administer the Code only in instances where it receives explicit statutory delegation.

Summary of the Low-Income Housing Tax Credit

The LIHTC is a tax incentive intended to increase the availability of low-income housing. Section 42 provides an income tax credit to owners of newly constructed or substantially rehabilitated low-income rental housing projects. The dollar amount of the LIHTC available for allocation by each state (credit ceiling) is limited by population. Each state is allowed a credit ceiling based on a statutory formula indicated at section 42(h)(3). States may carry forward unallocated credits derived from the credit ceiling for one year; however, to the extent such unallocated credits are not used by then, the credits go into a national pool to be redistributed to states as additional credit. State and local housing agencies allocate the state's credit ceiling among low-income housing buildings whose owners have applied for the credit. Besides section 42 credits derived from the credit ceiling, states may also provide section 42 credits to owners of buildings based on the percentage of certain building costs financed by tax-exempt bond proceeds. Credits provided under the tax-exempt bond ''volume cap'' do not reduce the credits available from the credit ceiling.

The credits allocated to a building are based on the cost of units placed in service as low-income units under particular minimum occupancy and maximum rent criteria. In general, a building must meet one of two thresholds to be eligible for the LIHTC: Either 20 percent of the units must be rent-restricted and occupied by tenants with incomes no higher than 50 percent of the Area Median Gross Income (AMGI), or 40 percent of the units must

be rent-restricted and occupied by tenants with incomes no higher than 60 percent of AMGI. The term ''rent-restricted'' means that gross rent, including an allowance for tenant-paid utilities, cannot exceed 30 percent of the tenant's imputed income limitation (i.e., 50 percent or 60 percent of AMGI). The rent and occupancy thresholds remain in effect for at least 15 years, and building owners are required to enter into agreements to maintain the low-income character of the building for at least an additional 15 years.

The LIHTC reduces income tax liability dollar-for-dollar. It is taken annually for a term of 10 years and is intended to yield a present value of either: (1) 70 percent of the ''qualified basis'' for new construction or substantial rehabilitation expenditures that are not federally subsidized (as defined in section 42(i)), or (2) 30 percent of the qualified basis for the cost of acquiring certain existing buildings or projects that are federally subsidized. The actual credit rates are adjusted monthly for projects placed in service after 1987 under procedures specified in section 42. Individuals can use the credits up to a deduction equivalent of $25,000 (the actual maximum amount of credit that an individual can claim depends on the individual's marginal tax rate). For buildings placed in service after December 31, 2007, individuals can use the credits against the alternative minimum tax. Corporations, other than S or personal service corporations, can use the credits against ordinary income tax, and, for buildings placed in service after December 31, 2007, against the alternative minimum tax. These corporations also can deduct losses from the project.

The qualified basis represents the product of the building's ''applicable fraction'' and its ''eligible basis.'' The applicable fraction is based on the number of low-income units in the building as a percentage of the total number of units, or based on the floor space of low-income units as a percentage of the total floor space of residential units in the building. The eligible basis is the adjusted basis attributable to acquisition, rehabilitation, or new construction costs (depending on the type of LIHTC involved). These costs include amounts chargeable to a capital account that are incurred prior to the end of the first taxable year in which the qualified low-income building is placed in service or, at the election of the taxpayer, the end of the succeeding taxable year. In the case of buildings located in designated DDAs or designated QCTs, eligible basis can be increased up to 130 percent from what it would otherwise be. This means that the available credits also can be increased by up to 30 percent. For example, if a 70 percent credit is available, it effectively could be increased to as much as 91 percent.

Section 42 of the Code defines a DDA as any area designated by the Secretary of HUD as an area that has high construction, land, and utility costs relative to the AMGI. All designated DDAs in metropolitan areas (taken together) may not contain more than 20 percent of the aggregate population of all metropolitan areas, and all designated areas not in metropolitan areas may not contain more than 20 percent of the aggregate population of all nonmetropolitan areas.

The GO Zone Act provides that areas ''determined by the President to warrant individual or individual and public assistance from the Federal Government'' under the Stafford Act by reason of Hurricanes Katrina, Rita, or Wilma shall be treated as DDAs designated under subclause I of Internal Revenue Code section 42(d)(5)(C)(iii) [1] (i.e., areas designated by the Secretary of HUD as having high construction, land, and utility costs relative to AMGI), and shall not be taken into account for purposes of applying the limitation under subclause II of such section (*i.e.*, the 20 percent cap on the total population of designated areas). This notice lists the affected areas described in the GO Zone Act. Because the populations of DDAs designated under the GO Zone Act are not counted against the statutory 20 percent cap on the aggregate population of DDAs, the total population of designated metropolitan DDAs (regular and GO Zone) listed in this notice exceeds 20 percent of the total population of all MSAs, and the population of all nonmetropolitan DDAs listed in this notice exceeds 20 percent of the total population of nonmetropolitan counties.

Section 42(d)(5)(C)(v) as added to the Code by the Housing and Economic Recovery Act of 2008, and redesignated as section 42(d)(5)(B)(v), allows states to award an increase in basis up to 30 percent to buildings located outside of federally designated DDAs and QCTs if the increase is necessary to make the building financially feasible. This state discretion applies only to buildings allocated credits under the state housing credit ceiling and is not permitted for buildings receiving credits in connection with tax-exempt bonds. Rules for such designations shall be set forth in the LIHTC-allocating agencies' qualified allocation plans (QAPs).

[1] Section 42(d)(5)(C)(iii) was redesignated section 42(d)(5)(b)(iii) by the Housing and Economic Recovery Act of 2008.

Explanation of HUD Designation Methodology

A. Difficult Development Areas

This notice lists all areas ''determined by the President to warrant individual or individual and public assistance from the Federal Government'' under the Stafford Act by reason of Hurricanes Katrina, Rita, or Wilma as DDAs according to lists of counties and parishes from the Federal Emergency Management Agency Web site (*http://www.fema.gov/*). Affected metropolitan areas and nonmetropolitan areas are assigned the indicator ''[GO Zone]'' in the lists of DDAs.

In developing the list of the remaining DDAs, HUD compared housing costs with incomes. HUD used 2000 Census population data and the MSA definitions, as published in OMB Bulletin No. 07–01 on December 18, 2006, with modifications, as described below. In keeping with past practice of basing the coming year's DDA designations on data from the preceding year, the basis for these comparisons is the FY2008 HUD income limits for very low-income households (Very Low-Income Limits, or VLILs), which are based on 50 percent of AMGI, and final FY2008 FMRs used for the Housing Choice Voucher (HCV) program. In formulating the FY2008 FMRs and VLILs, HUD modified the current OMB definitions of MSAs to account for substantial differences in rents among areas within each new MSA that were in different FMR areas under definitions used in prior years. HUD formed these ''HUD Metro FMR Areas'' (HMFAs) in cases where one or more of the parts of newly defined MSAs that previously were in separate FMR areas had 2000 Census base 40th-percentile recent-mover rents that differed, by 5 percent or more, from the same statistic calculated at the MSA level. In addition, a few HMFAs were formed on the basis of very large differences in AMGIs among the MSA parts. All HMFAs are contained entirely within MSAs. All nonmetropolitan counties are outside of MSAs and are not broken up by HUD for purposes of setting FMRs and VLILs. (Complete details on HUD's process for determining FY2008 FMR areas and FMRs are available at *http://www.huduser.org/DATASETS/fmr/fmrs/index.asp?data=fmr08*. Complete details on HUD's process for determining FY2008 income limits are available at *http://www.huduser.org/datasets/il/il2008_docsys.html*.)

HUD's unit of analysis for designating metropolitan DDAs, therefore, consists of: entire MSAs, in cases where these were not broken up into HMFAs for purposes of computing FMRs and VLILs; and HMFAs within the MSAs that were broken up for such purposes. Hereafter in this notice, the unit of analysis for designating metropolitan DDAs will be called the HMFA, and the unit of analysis for nonmetropolitan DDAs will be the nonmetropolitan county or county equivalent area. The procedure used in making the DDA calculations follows:

1. For each HMFA and each nonmetropolitan county, a ratio was calculated. This calculation used the final FY2008 two-bedroom FMR and the FY2008 four-person VLIL.

a. The numerator of the ratio was the area's final FY2008 FMR. In general, the FMR is based on the 40th-percentile gross rent paid by recent movers to live in a two-bedroom apartment. In metropolitan areas granted a FMR based on the 50th-percentile rent for purposes of improving the administration of HUD's HCV program (see 71 FR 5068), the 40th-percentile rent was used to ensure nationwide consistency of comparisons.

b. The denominator of the ratio was the monthly LIHTC income-based rent limit, which was calculated as 1/12 of 30 percent of 120 percent of the area's VLIL (where the VLIL was rounded to the nearest $50 and not allowed to exceed 80 percent of the AMGI in areas where the VLIL is adjusted upward from its 50 percent-of-AMGI base).

2. The ratios of the FMR to the LIHTC income-based rent limit were arrayed in descending order, separately, for HMFAs and for nonmetropolitan counties.

3. The non-GO Zone DDAs are those HMFAs and nonmetropolitan counties *not* in areas ''determined by the President to warrant individual or individual and public assistance from the Federal Government'' under the Stafford Act by reason of Hurricanes Katrina, Rita, or Wilma, with the highest ratios cumulative to 20 percent of the 2000 population of all HMFAs and of all nonmetropolitan counties, respectively.

B. Application of Population Caps to DDA Determinations

In identifying DDAs, HUD applied caps, or limitations, as noted above. The cumulative population of metropolitan DDAs *not* in areas ''determined by the President to warrant individual or individual and public assistance from the Federal Government'' under the Stafford Act by reason of Hurricanes Katrina, Rita, or Wilma cannot exceed 20 percent of the cumulative population of all metropolitan areas. The cumulative population of nonmetropolitan DDAs *not* in areas ''determined by the President to warrant individual or individual and public assistance from the Federal Government'' under the Stafford Act by reason of Katrina, Rita, or Wilma cannot exceed 20 percent of the cumulative population of all nonmetropolitan areas.

In applying these caps, HUD established procedures to deal with how to treat small overruns of the caps. The remainder of this section explains those procedures. In general, HUD stops selecting areas when it is impossible to choose another area without exceeding the applicable cap. The only exceptions to this policy are when the next eligible excluded area contains either a large absolute population or a large percentage of the total population, or the next excluded area's ranking ratio, as described above, was identical (to four decimal places) to the last area selected, *and* its inclusion resulted in only a minor overrun of the cap. Thus, for both the designated metropolitan and nonmetropolitan DDAs, there may be minimal overruns of the cap. HUD believes the designation of additional areas in the above examples of minimal overruns is consistent with the intent of the Stafford Act. As long as the apparent excess is small due to measurement errors, some latitude is justifiable because it is impossible to determine whether the 20 percent cap has been exceeded. Despite the care and effort involved in a Decennial Census, the Census Bureau and all users of the data recognize that the population counts for a given area and for the entire country are not precise. Therefore, the extent of the measurement error is unknown. There can be errors in both the numerator and denominator of the ratio of populations used in applying a 20 percent cap. In circumstances where a strict application of a 20 percent cap results in an anomalous situation, recognition of the unavoidable imprecision in the census data justifies accepting small variances above the 20 percent limit.

C. Exceptions to OMB Definitions of MSAs and Other Geographic Matters

As stated in OMB Bulletin 07–01, defining metropolitan areas:

> ''OMB establishes and maintains the definitions of Metropolitan * * * Statistical Areas, * * * solely for statistical purposes. * * * OMB does not take into account or attempt to anticipate any non-statistical uses that may be made of the definitions[.] In cases where * * * an agency elects to use the Metropolitan * * * Area definitions in nonstatistical programs, it is the sponsoring agency's responsibility to ensure that the definitions are appropriate for such use. An agency using the statistical definitions in a nonstatistical program may modify the definitions, but only for the purposes of that program. In such cases, any modifications should be clearly identified as deviations from the OMB statistical area definitions in order to avoid confusion with OMB's official definitions of Metropolitan * * * Statistical Areas.''

Following OMB guidance, the estimation procedure for the FY2008 FMRs incorporates the current OMB definitions of metropolitan areas based on the new Core-Based Statistical Area (CBSA) standards, as implemented with 2000 Census data, but makes adjustments to the definitions, in order to separate subparts of these areas in cases where FMRs (and in a few cases, VLILs) would otherwise change significantly if the new area definitions were used without modification. In CBSAs where sub-areas are established, it is HUD's view that the geographic extent of the housing markets are not yet the same as the geographic extent of the CBSAs, but may approach becoming so as the social and economic integration of the CBSA component areas increases.

The geographic baseline for the new estimation procedure is the CBSA Metropolitan Areas (referred to as Metropolitan Statistical Areas or MSAs) and CBSA Non-Metropolitan Counties (nonmetropolitan counties include the county components of Micropolitan CBSAs where the counties are generally assigned separate FMRs). The HUD-modified CBSA definitions allow for subarea FMRs within MSAs based on the boundaries of ''Old FMR Areas'' (OFAs) within the boundaries of new MSAs. (OFAs are the FMR areas defined for the FY2005 FMRs. Collectively, they include the June 30, 1999, OMB definitions of MSA and Primary MSAs (old definition MSAs/PMSAs), metropolitan counties deleted from old definition MSAs/PMSAs by HUD for FMR-setting purposes, and counties and county parts outside of old definition MSAs/PMSAs referred to as non-metropolitan counties.) Subareas of MSAs are assigned their own FMRs when the subarea 2000 Census Base FMR differs significantly from the MSA 2000 Census Base FMR (or, in some cases, where the 2000 Census base AMGI differs significantly from the MSA 2000 Census Base AMGI). MSA subareas, and the remaining portions of MSAs after subareas have been determined, are referred to as ''HUD Metro FMR Areas (HMFAs),'' to distinguish such areas from OMB's official definition of MSAs.

In addition, Waller County, Texas, which is part of the Houston-Baytown-Sugar Land, TX HMFA, is not an area ''determined by the President to warrant individual or individual and public assistance from the Federal Government'' under the Stafford Act by reason of Hurricanes Katrina, Rita, or Wilma. It is, therefore, excluded from the definition of the Houston-Baytown-Sugar Land, TX HMFA and is assigned the FMR and VLIL of the Houston-Baytown-Sugar Land, TX HMFA and is evaluated as if it were a separate metropolitan area for purposes of designating DDAs. The Houston-Baytown-Sugar Land, TX HMFA is assigned the indicator ''(part)'' in the list of Metropolitan DDAs.

In the New England states (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont), HMFAs are defined according to county subdivisions or minor civil divisions (MCDs), rather than county boundaries. However, since no part of a HMFA is outside an OMB-defined, county-based MSA, all New England nonmetropolitan counties are kept intact for purposes of designating Nonmetropolitan DDAs.

For the convenience of readers of this notice, the geographical definitions of designated Metropolitan DDAs are included in the list of DDAs.

The Census Bureau provides no tabulations of 2000 Census data for Broomfield County, Colorado, an area that was created from parts of four Colorado counties when the city of Broomfield became a county in November 2001. Broomfield County is made up of former parts of Adams, Boulder, Jefferson, and Weld counties. The boundaries of Broomfield County are similar, but not identical to, the boundaries of the city of Broomfield at the time of the 2000 Census. In OMB metropolitan area definitions and, therefore, for purposes of this notice, Broomfield County is included as part of the Denver-Aurora, CO MSA. Census tracts in Broomfield County include the parts of the Adams, Boulder, Jefferson, and Weld County census tracts that were within the boundaries of the city of Broomfield according to the 2000 Census, plus parts of three Adams County tracts (85.15, 85.16, and 85.28), and one Jefferson County tract (98.25) that were not within any municipality during the 2000 Census but which, according to Census Bureau maps, are within the boundaries of Broomfield County. Data for Adams, Boulder, Jefferson, and Weld counties and their census tracts were adjusted to exclude the data assigned to Broomfield County and its census tracts.

Future Designations

DDAs are designated annually as updated income and FMR data are made public.

Effective Date

For DDAs designated by reason of being in areas ''determined by the President to warrant individual or individual and public assistance from the Federal Government'' under the Stafford Act by reason of Hurricanes Katrina, Rita, or Wilma (the GO Zone Designation), the designation is effective:

(1) For housing credit dollar amounts allocated and buildings placed in service during the period beginning on January 1, 2006, and ending on December 31, 2010; or

(2) For purposes of Section 42(h)(4) of the Internal Revenue Code, for buildings placed in service during the period beginning on January 1, 2006, and ending on December 31, 2010, but only with respect to bonds issued after December 31, 2005.

The 2009 lists of DDAs that are not part of the GO Zone Designation are effective:

(1) For allocations of credit after December 31, 2008; or

(2) For purposes of Section 42(h)(4) of the Code, if the bonds are issued and the building is placed in service after December 31, 2008.

If an area is not on a subsequent list of DDAs, the 2009 lists are effective for the area if:

(1) The allocation of credit to an applicant is made no later than the end of the 365-day period after the applicant submits a complete application to the LIHTC-allocating agency, and the submission is made before the effective date of the subsequent lists; or

(2) For purposes of section 42(h)(4) of the Code, if:

(a) The bonds are issued or the building is placed in service no later than the end of the 365-day period after the applicant submits a complete application to the bond-issuing agency, and

(b) The submission is made before the effective date of the subsequent lists, provided that both the issuance of the bonds and the placement in service of the building occur after the application is submitted.

An application is deemed to be submitted on the date it is filed if the application is determined to be complete by the credit-allocating or bond-issuing agency. A ''complete application'' means that no more than *de minimis* clarification of the application is required for the agency to make a decision about the allocation of tax credits or issuance of bonds requested in the application.

In the case of a ''multiphase project,'' the DDA or QCT status of the site of the project that applies for all phases of the project is that which applied when the project received its first allocation of LIHTC. For purposes of section 42(h)(4) of the Code, the DDA or QCT status of the site of the project that applies for all phases of the project is that which applied when the first of the following occurred: (a) The building(s) in the first phase were placed in service or (b) the bonds were issued.

For purposes of this notice, a ''multiphase project'' is defined as a set of buildings to be constructed or rehabilitated under the rules of the LIHTC and meeting the following criteria:

(1) The multiphase composition of the project (i.e., total number of buildings and phases in project, with a description of how many buildings are to be built in each phase and when each phase is to be completed, and any other information required by the agency) is made known by the applicant in the first application of credit for any building in the project, and that applicant identifies the buildings in the project for which credit is (or will be) sought;

(2) The aggregate amount of LIHTC applied for on behalf of, or that would eventually be allocated to, the buildings on the site exceeds the one-year limitation on credits per applicant, as defined in the QAP of the LIHTC-allocating agency, or the annual per capita credit authority of the LIHTC allocating agency, and is the reason the applicant must request multiple allocations over 2 or more years; and

(3) All applications for LIHTC for buildings on the site are made in immediately consecutive years.

Members of the public are hereby reminded that the Secretary of Housing and Urban Development, or the Secretary's designee, has sole legal authority to designate DDAs and QCTs by publishing lists of geographic entities as defined by, in the case of DDAs, the several states and the governments of the insular areas of the United States and, in the case of QCTs, by the Census Bureau; and to establish the effective dates of such lists. The Secretary of the Treasury, through the IRS thereof, has sole legal authority to interpret, and to determine and enforce compliance with the Code and associated regulations, including **Federal Register** notices published by HUD for purposes of designating DDAs and QCTs. Representations made by any other

entity as to the content of HUD notices designating DDAs and QCTs that do not precisely match the language published by HUD should not be relied upon by taxpayers in determining what actions are necessary to comply with HUD notices.

Interpretive Examples of Effective Date

For the convenience of readers of this notice, interpretive examples are provided below to illustrate the consequences of the effective date in areas that gain or lose DDA status. The term ''regular DDA,'' as used below, refers to DDAs that are designated by the Secretary of HUD as having high construction, land, and utility costs relative to AMGI. The term ''GO Zone DDA'' refers to areas ''determined by the President to warrant individual or individual and public assistance from the Federal Government'' under the Stafford Act by reason of Hurricanes Katrina, Rita, or Wilma. The examples covering regular DDAs are equally applicable to QCT designations.

(Case A) Project A is located in a 2009 regular DDA that is NOT a designated regular DDA in 2010. A complete application for tax credits for Project A is filed with the allocating agency on November 15, 2009. Credits are allocated to Project A on October 30, 2010. Project A is eligible for the increase in basis accorded a project in a 2009 regular DDA because the application was filed BEFORE January 1, 2010 (the assumed effective date for the 2010 regular DDA lists), and because tax credits were allocated no later than the end of the 365-day period after the filing of the complete application for an allocation of tax credits.

(Case B) Project B is located in a 2009 regular DDA that is NOT a designated regular DDA in 2010. A complete application for tax credits for Project B is filed with the allocating agency on December 1, 2009. Credits are allocated to Project B on March 30, 2011. Project B is NOT eligible for the increase in basis accorded a project in a 2009 regular DDA because, although the application for an allocation of tax credits was filed BEFORE January 1, 2010 (the assumed effective date of the 2010 regular DDA lists), the tax credits were allocated later than the end of the 365-day period after the filing of the complete application.

(Case C) Project C is located in a 2009 regular DDA that was not a DDA in 2008. Project C was placed in service on November 15, 2008. A complete application for tax-exempt bond financing for Project C is filed with the bond-issuing agency on January 15, 2009. The bonds that will support the permanent financing of Project C are issued on September 30, 2009. Project C is NOT eligible for the increase in basis otherwise accorded a project in a 2009 DDA because the project was placed in service BEFORE January 1, 2009.

(Case D) Project D is located in an area that is a regular DDA in 2009, but is NOT a regular DDA in 2010. A complete application for tax-exempt bond financing for Project D is filed with the bond-issuing agency on October 30, 2009. Bonds are issued for Project D on April 30, 2010, but Project D is not placed in service until January 30, 2011. Project D is eligible for the increase in basis available to projects located in 2009 regular DDAs because: (1) The first of the two events necessary for triggering the effective date for buildings described in Section 42(h)(4)(B) of the Code (the two events being bonds issued and buildings placed in service) took place on April 30, 2010, within the 365-day period after a complete application for tax-exempt bond financing was filed, (2) the application was filed during a time when the location of Project D was in a regular DDA, and (3) both the issuance of the bonds and placement in service of project D occurred after the application was submitted.

(Case E) Project E is located in a GO Zone DDA. The bonds used to finance Project E are issued on July 1, 2011, and Project E is placed in service July 1, 2012. Project E is NOT eligible for the increase in basis available to projects in GO Zone DDAs because it was not placed in service during the period that began on January 1, 2006, and ends on December 31, 2010.

(Case F) Project F is located in a GO Zone DDA. The bonds used to finance Project F were issued July 1, 2005, and Project F is placed in service on July 1, 2009. Project F is NOT eligible for the increase in basis available to projects in GO Zone DDAs because the bonds used to finance project F were issued BEFORE December 31, 2005.

(Case G) Project G is a multiphase project located in a 2009 regular DDA that is NOT a designated regular DDA in 2010. The first phase of Project G received an allocation of credits in 2009, pursuant to an application filed March 15, 2009, which describes the multiphase composition of the project. An application for tax credits for the second phase Project G is filed with the allocating agency by the same entity on March 15, 2010. The second phase of Project G is located on a contiguous site. Credits are allocated to the second phase of Project G on October 30, 2010. The aggregate amount of credits allocated to the two phases of Project G exceeds the amount of credits that may be allocated to an applicant in one year under the allocating agency's QAP and is the reason that applications were made in multiple phases. The second phase of Project G is, therefore, eligible for the increase in basis accorded a project in a 2009 regular DDA, because it meets all of the conditions to be a part of a multiphase project.

(Case H) Project H is a multiphase project located in a 2009 regular DDA that is NOT a designated regular DDA in 2010. The first phase of Project H received an allocation of credits in 2009, pursuant to an application filed March 15, 2009, which does not describe the multiphase composition of the project. An application for tax credits for the second phase of Project H is filed with the allocating agency by the same entity on March 15, 2011. Credits are allocated to the second phase of Project H on October 30, 2011. The aggregate amount of credits allocated to the two phases of Project H exceeds the amount of credits that may be allocated to an applicant in one year under the allocating agency's QAP. The second phase of Project H is, therefore, NOT eligible for the increase in basis accorded a project in a 2009 regular DDA, since it does not meet all of the conditions for a multiphase project, as defined in this notice. The original application for credits for the first phase did not describe the multiphase composition of the project. Also, the application for credits for the second phase of Project H was not made in the year immediately following the first phase application year.

Findings and Certifications

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.19(c)(6) of HUD's regulations, the policies and procedures contained in this notice provide for the establishment of fiscal requirements or procedures that do not constitute a development decision affecting the physical condition of specific project areas or building sites and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act, except for extraordinary circumstances, and no Finding of No Significant Impact is required.

Federalism Impact

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any policy document that has federalism implications if the document either imposes substantial direct compliance costs on state and

local governments and is not required by statute, or the document preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the executive order. This notice merely designates DDAs as required under Section 42 of the Internal Revenue Code, as amended, for the use by political subdivisions of the states in allocating the LIHTC. This notice also details the technical methodology used in making such designations. As a result, this notice is not subject to review under the order.

Dated: August 12, 2008.

Darlene F. Williams,

Assistant Secretary for Policy Development and Research.

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2009 IRS SECTION 42(d)(5)(B) METROPOLITAN DIFFICULT DEVELOPMENT AREAS
(OMB Metropolitan Area Definitions, December 18, 2006 [MSA] and derived FY2008 HUD Metro FMR Area Definitions [HMFA])

State	Metropolitan Area	Metropolitan Area Components			
Alabama	Mobile, AL MSA [GO Zone]	Mobile County			
	Tuscaloosa, AL MSA [GO Zone]	Greene County	Hale County	Tuscaloosa County	
Arizona	Flagstaff, AZ MSA	Coconino County			
	Prescott, AZ MSA	Yavapai County			
	Yuma, AZ MSA	Yuma County			
California	Los Angeles-Long Beach, CA HMFA	Los Angeles County			
	Orange County, CA HMFA	Orange County			
	Oxnard-Thousand Oaks-Ventura, CA MSA	Ventura County			
	Riverside-San Bernardino-Ontario, CA MSA	Riverside County	San Bernardino County		
	Salinas, CA MSA	Monterey County			
	San Diego-Carlsbad-San Marcos, CA MSA	San Diego County			
	San Luis Obispo-Paso Robles, CA MSA	San Luis Obispo County			
	Santa Barbara-Santa Maria, CA MSA	Santa Barbara County			
	Santa Cruz-Watsonville, CA MSA	Santa Cruz County			
Florida	Cape Coral-Fort Myers, FL MSA [GO Zone]	Lee County			
	Deltona-Daytona Beach-Ormond Beach, FL MSA	Volusia County			
	Fort Lauderdale, FL HMFA [GO Zone]	Broward County			
	Miami-Miami Beach-Kendall, FL HMFA [GO Zone]	Miami-Dade County			
	Naples-Marco Island, FL MSA [GO Zone]	Collier County			
	Orlando-Kissimmee, FL MSA	Lake County	Orange County	Osceola County	Seminole County
	Palm Bay-Melbourne-Titusville, FL MSA [GO Zone]	Brevard County			
	Palm Coast, FL MSA	Flagler County			
	Port St. Lucie-Fort Pierce, FL MSA [GO Zone]	Martin County	St. Lucie County		
	Punta Gorda, FL MSA	Charlotte County			
	Sarasota-Bradenton-Venice, FL MSA	Manatee County	Sarasota County		
	Sebastian-Vero Beach, FL MSA [GO Zone]	Indian River County			
	Tampa-St. Petersburg-Clearwater, FL MSA	Hernando County	Hillsborough County	Pasco County	Pinellas County
	West Palm Beach-Boca Raton, FL HMFA [GO Zone]	Palm Beach County			
Hawaii	Honolulu, HI MSA	Honolulu County			
Louisiana	Baton Rouge, LA HMFA [GO Zone]	Ascension Parish	East Baton Rouge Parish	East Feliciana Parish	Livingston Parish
		Pointe Coupee Parish	St. Helena Parish	West Baton Rouge Parish	West Feliciana Parish
	Houma-Bayou Cane-Thibodaux, LA MSA [GO Zone]	Lafourche Parish	Terrebonne Parish		
	Iberville Parish, LA HMFA [GO Zone]	Iberville Parish			
	Lafayette, LA MSA [GO Zone]	Lafayette Parish	St. Martin Parish		
	Lake Charles, LA MSA [GO Zone]	Calcasieu Parish	Cameron Parish		
	New Orleans-Metairie-Kenner, LA MSA [GO Zone]	Jefferson Parish	Orleans Parish	Plaquemines Parish	St. Bernard Parish
		St. Charles Parish	St. John the Baptist Parish	St. Tammany Parish	

Metropolitan DDAs labeled "[GO Zone]" are designated under the Gulf Opportunity Zone Act of 2005. Their populations do not count against the 20 percent population cap on metropolitan areas designated DDAs by reason of high land, construction, and utility costs relative to area median gross income.

2009 IRS SECTION 42(d)(5)(B) METROPOLITAN DIFFICULT DEVELOPMENT AREAS
(OMB Metropolitan Area Definitions, December 18, 2006 [MSA] and derived FY2008 HUD Metro FMR Area Definitions [HMFA])

State	Metropolitan Area	Metropolitan Area Components			
Massachusetts	**Barnstable Town, MA MSA**	Barnstable County			
	Boston-Cambridge-Quincy, MA-NH HMFA	Acton town	Amesbury town	Arlington town	Ashby town
		Ashland town	Ayer town	Bedford town	Bellingham town
		Belmont town	Beverly city	Boston city	Boxborough town
		Braintree town	Brookline town	Burlington town	Cambridge city
		Canton town	Carlisle town	Carver town	Chelsea city
		Cohasset town	Concord town	Danvers town	Dedham town
		Dover town	Duxbury town	Essex town	Everett city
		Foxborough town	Framingham town	Franklin city	Gloucester city
		Hamilton town	Hanover town	Hingham town	Holbrook town
		Holliston town	Hopkinton town	Hudson town	Hull town
		Ipswich town	Kingston town	Lexington town	Lincoln town
		Littleton town	Lynn city	Lynnfield town	Malden city
		Manchester-by-the-Sea town	Marblehead town	Marlborough city	Marshfield town
		Maynard town	Medfield town	Medford city	Medway town
		Melrose city	Middleton town	Millis town	Milton town
		Nahant town	Natick town	Needham town	Newbury town
		Newburyport city	Newton city	Norfolk town	North Reading town
		Norwell town	Norwood town	Peabody city	Pembroke town
		Plainville town	Plymouth town	Quincy city	Randolph town
		Reading town	Revere city	Rockland town	Rockport town
		Rowley town	Salem city	Salisbury town	Saugus town
		Scituate town	Sharon town	Sherborn town	Shirley town
		Somerville city	Stoneham town	Stoughton town	Stow town
		Sudbury town	Swampscott town	Topsfield town	Townsend town
		Wakefield town	Walpole town	Waltham city	Wareham town
		Watertown city	Wayland town	Wellesley town	Wenham town
		Weston town	Westwood town	Weymouth town	Wilmington town
		Winchester town	Winthrop town	Woburn city	Wrentham town
	Brockton, MA HMFA	Abington town	Avon town	Bridgewater town	Brockton city
		East Bridgewater town	Halifax town	Hanson town	Lakeville town
		Marion town	Mattapoisett town	Middleborough town	Plympton town
		Rochester town	West Bridgewater town	Whitman town	
Mississippi	**Gulfport-Biloxi, MS MSA [GO Zone]**	Hancock County	Harrison County	Stone County	
	Hattiesburg, MS MSA [GO Zone]	Forrest County	Lamar County	Perry County	
	Jackson, MS HMFA [GO Zone]	Copiah County	Hinds County	Madison County	Rankin County
	Pascagoula, MS MSA [GO Zone]	George County	Jackson County		
	Simpson County, MS HMFA [GO Zone]	Simpson County			
	Tunica County, MS HMFA	Tunica County			
New Hampshire	**Boston-Cambridge-Quincy, MA-NH HMFA**	Seabrook town	South Hampton town		
New Jersey	**Atlantic City, NJ MSA**	Atlantic County			
	Jersey City, NJ HMFA	Hudson County			
	Vineland-Millville-Bridgeton, NJ MSA	Cumberland County			
New York	**Nassau-Suffolk, NY HMFA**	Nassau County	Suffolk County		
	New York, NY HMFA	Bronx County	Kings County	New York County	Putnam County
		Queens County	Richmond County	Rockland County	Westchester County

Metropolitan DDAs labeled "[GO Zone]" are designated under the Gulf Opportunity Zone Act of 2005. Their populations do not count against the 20 percent population cap on metropolitan areas designated DDAs by reason of high land, construction, and utility costs relative to area median gross income.

2009 IRS SECTION 42(d)(5)(B) METROPOLITAN DIFFICULT DEVELOPMENT AREAS
(OMB Metropolitan Area Definitions, December 18, 2006 [MSA] and derived FY2008 HUD Metro FMR Area Definitions [HMFA])

State	Metropolitan Area	Metropolitan Area Components			
Texas	Beaumont-Port Arthur, TX MSA [GO Zone]	Hardin County	Jefferson County	Orange County	
	Brazoria County, TX HMFA [GO Zone]	Brazoria County			
	Corpus Christi, TX HMFA	Nueces County	San Patricio County		
	Houston-Baytown-Sugar Land, TX HMFA (part) [GO Zone]	Chambers County	Fort Bend County	Galveston County	Harris County
		Liberty County	Montgomery County	San Jacinto County	
Puerto Rico	Aguadilla-Isabela-San Sebastián, PR MSA	Aguada Municipio	Aguadilla Municipio	Añasco Municipio	Isabela Municipio
		Lares Municipio	Moca Municipio	Rincón Municipio	San Sebastián Municipio
	Barranquitas-Aibonito-Quebradillas, PR HMFA	Aibonito Municipio	Barranquitas Municipio	Ciales Municipio	Maunabo Municipio
		Orocovis Municipio	Quebradillas Municipio		
	Caguas, PR HMFA	Caguas Municipio	Cayey Municipio	Cidra Municipio	Gurabo Municipio
		San Lorenzo Municipio			
	Fajardo, PR MSA	Ceiba Municipio	Fajardo Municipio	Luquillo Municipio	
	Guayama, PR MSA	Arroyo Municipio	Guayama Municipio	Patillas Municipio	
	Mayagüez, PR MSA	Hormigueros Municipio	Mayagüez Municipio		
	Ponce, PR MSA	Juana Díaz Municipio	Ponce Municipio	Villalba Municipio	
	San Germán-Cabo Rojo, PR MSA	Cabo Rojo Municipio	Lajas Municipio	Sabana Grande Municipio	San Germán Municipio
	San Juan-Guaynabo, PR HMFA	Aguas Buenas Municipio	Barceloneta Municipio	Bayamón Municipio	Canóvanas Municipio
		Carolina Municipio	Cataño Municipio	Comerío Municipio	Corozal Municipio
		Dorado Municipio	Florida Municipio	Guaynabo Municipio	Humacao Municipio
		Juncos Municipio	Las Piedras Municipio	Loíza Municipio	Manatí Municipio
		Morovis Municipio	Naguabo Municipio	Naranjito Municipio	Río Grande Municipio
		San Juan Municipio	Toa Alta Municipio	Toa Baja Municipio	Trujillo Alto Municipio
		Vega Alta Municipio	Vega Baja Municipio	Yabucoa Municipio	

Metropolitan DDAs labeled "[GO Zone]" are designated under the Gulf Opportunity Zone Act of 2005. Their populations do not count against the 20 percent population cap on metropolitan areas designated DDAs by reason of high land, construction, and utility costs relative to area median gross income.

2009 IRS SECTION 42(d)(5)(B) NONMETROPOLITAN DIFFICULT DEVELOPMENT AREAS (OMB Metropolitan Area Definitions, December 18, 2006)

State	Nonmetropolitan Counties or County Equivalents			
Alabama	Baldwin County [GO Zone]	Choctaw County [GO Zone]	Clarke County [GO Zone]	Marengo County [GO Zone]
	Pickens County [GO Zone]	Sumter County [GO Zone]	Washington County [GO Zone]	
Alaska	Aleutians East Borough	Bethel Census Area	Bristol Bay Borough	Dillingham Census Area
	Haines Borough	Juneau City and Borough	Ketchikan Gateway Borough	Kodiak Island Borough
	Lake and Peninsula Borough	Nome Census Area	North Slope Borough	Northwest Arctic Borough
	Prince of Wales-Outer Ketchikan Census Area	Sitka City and Borough	Skagway-Hoonah-Angoon Census Area	Southeast Fairbanks Census Area
	Valdez-Cordova Census Area	Wade Hampton Census Area	Wrangell-Petersburg Census Area	Yakutat City and Borough
	Yukon-Koyukuk Census Area			
Arizona	Apache County	Cochise County	Gila County	Graham County
	La Paz County	Navajo County	Santa Cruz County	
Arkansas	Baxter County	Carroll County	Drew County	Hempstead County
	Lafayette County	Mississippi County	Montgomery County	Nevada County
	Pike County	St. Francis County		
California	Amador County	Calaveras County	Colusa County	Del Norte County
	Glenn County	Humboldt County	Inyo County	Lake County
	Lassen County	Mariposa County	Mendocino County	Modoc County
	Mono County	Nevada County	Plumas County	Sierra County
	Siskiyou County	Tehama County	Trinity County	Tuolumne County
Colorado	Archuleta County	Custer County	Dolores County	Eagle County
	Hinsdale County	Jackson County	Lake County	Mineral County
	Ouray County	Pitkin County	Rio Blanco County	Routt County
	San Juan County	San Miguel County	Summit County	
Florida	Calhoun County	Citrus County	Columbia County	DeSoto County
	Franklin County	Glades County [GO Zone]	Gulf County	Hardee County
	Hendry County [GO Zone]	Highlands County	Liberty County	Madison County
	Monroe County [GO Zone]	Okeechobee County [GO Zone]	Taylor County	Union County
	Walton County			
Georgia	Decatur County	Gilmer County	Gordon County	Lumpkin County
	Rabun County	Talbot County	Towns County	Troup County
	Union County	White County		
Hawaii	Hawaii County	Kalawao County	Kauai County	Maui County
Idaho	Benewah County	Bonner County	Boundary County	Cassia County
	Gooding County	Idaho County	Jerome County	Lincoln County
	Twin Falls County			
Kentucky	Bath County	Butler County	Carlisle County	Elliott County
	Fulton County	Lewis County	Lincoln County	Menifee County
	Montgomery County	Morgan County	Nicholas County	Owen County
	Powell County	Rowan County	Simpson County	Todd County
	Whitley County			
Louisiana	Acadia Parish [GO Zone]	Allen Parish [GO Zone]	Assumption Parish [GO Zone]	Beauregard Parish [GO Zone]
	Bienville Parish	Claiborne Parish	Evangeline Parish [GO Zone]	Iberia Parish [GO Zone]
	Jefferson Davis Parish [GO Zone]	Natchitoches Parish	Red River Parish	Sabine Parish [GO Zone]
	St. James Parish [GO Zone]	St. Landry Parish [GO Zone]	St. Mary Parish [GO Zone]	Tangipahoa Parish [GO Zone]
	Vermilion Parish [GO Zone]	Vernon Parish [GO Zone]	Washington Parish [GO Zone]	
Maine	Franklin County	Hancock County	Knox County	Lincoln County
	Oxford County	Piscataquis County	Waldo County	Washington County
Massachusetts	Dukes County	Nantucket County		
Michigan	Benzie County	Branch County	Otsego County	

Nonmetropolitan DDAs labeled "[GO Zone]" are designated under the Gulf Opportunity Zone Act of 2005. Their populations do not count against the 20 percent population cap on nonmetropolitan areas designated DDAs by reason of high land, construction, and utility costs relative to area median gross income.

2009 IRS SECTION 42(d)(5)(B) NONMETROPOLITAN DIFFICULT DEVELOPMENT AREAS (OMB Metropolitan Area Definitions, December 18, 2006)

State	Nonmetropolitan Counties or County Equivalents			
Mississippi	Adams County [GO Zone]	Amite County [GO Zone]	Attala County [GO Zone]	Benton County
	Bolivar County	Chickasaw County	Choctaw County [GO Zone]	Claiborne County [GO Zone]
	Clarke County [GO Zone]	Coahoma County	Covington County [GO Zone]	Franklin County [GO Zone]
	Greene County [GO Zone]	Holmes County [GO Zone]	Humphreys County [GO Zone]	Issaquena County
	Jasper County [GO Zone]	Jefferson County [GO Zone]	Jefferson Davis County [GO Zone]	Jones County [GO Zone]
	Kemper County [GO Zone]	Lafayette County	Lauderdale County [GO Zone]	Lawrence County [GO Zone]
	Leake County [GO Zone]	Lincoln County [GO Zone]	Lowndes County [GO Zone]	Marion County [GO Zone]
	Neshoba County [GO Zone]	Newton County [GO Zone]	Noxubee County [GO Zone]	Oktibbeha County [GO Zone]
	Pearl River County [GO Zone]	Pike County [GO Zone]	Quitman County	Scott County [GO Zone]
	Sharkey County	Smith County [GO Zone]	Walthall County [GO Zone]	Warren County [GO Zone]
	Washington County	Wayne County [GO Zone]	Wilkinson County [GO Zone]	Winston County [GO Zone]
	Yazoo County [GO Zone]			
Missouri	Taney County			
Montana	Beaverhead County	Madison County	Meagher County	Mineral County
	Ravalli County			
Nevada	Douglas County			
New Hampshire	Belknap County	Carroll County	Cheshire County	Grafton County
	Merrimack County	Sullivan County		
New Mexico	Guadalupe County	McKinley County	Mora County	Taos County
New York	Chautauqua County	Chenango County	Clinton County	Columbia County
	Cortland County	Delaware County	Essex County	Fulton County
	Greene County	Hamilton County	Jefferson County	Otsego County
	Schuyler County	Seneca County	Sullivan County	Yates County
North Carolina	Avery County	Chowan County	Cleveland County	Dare County
	Gates County	Hyde County	Jones County	McDowell County
	Mitchell County	Pasquotank County	Perquimans County	Rutherford County
	Transylvania County	Tyrrell County	Washington County	Watauga County
	Wilson County			
Oklahoma	Hughes County	Muskogee County	Okfuskee County	Payne County
	Pittsburg County			
Oregon	Clatsop County	Coos County	Crook County	Curry County
	Douglas County	Gilliam County	Grant County	Hood River County
	Josephine County	Lincoln County	Linn County	Morrow County
	Tillamook County	Wallowa County	Wheeler County	
Pennsylvania	Monroe County	Wayne County		
South Carolina	Beaufort County	Georgetown County	Jasper County	
Tennessee	Bedford County	Haywood County		

Nonmetropolitan DDAs labeled "[GO Zone]" are designated under the Gulf Opportunity Zone Act of 2005. Their populations do not count against the 20 percent population cap on nonmetropolitan areas designated DDAs by reason of high land, construction, and utility costs relative to area median gross income.

2009 IRS SECTION 42(d)(5)(B) NONMETROPOLITAN DIFFICULT DEVELOPMENT AREAS (OMB Metropolitan Area Definitions, December 18, 2006)

State	Nonmetropolitan Counties or County Equivalents			
Texas	Anderson County	Angelina County [GO Zone]	Bailey County	Baylor County
	Bee County	Brewster County	Briscoe County	Brooks County
	Brown County	Burnet County	Camp County	Cass County
	Castro County	Cherokee County	Childress County	Cochran County
	Coke County	Coleman County	Collingsworth County	Comanche County
	Cottle County	Crockett County	Culberson County	Dallam County
	Dawson County	Deaf Smith County	DeWitt County	Dickens County
	Dimmit County	Duval County	Eastland County	Edwards County
	Erath County	Falls County	Fisher County	Floyd County
	Foard County	Frio County	Gaines County	Garza County
	Gillespie County	Gonzales County	Grimes County	Hale County
	Hall County	Hamilton County	Hardeman County	Haskell County
	Henderson County	Hockley County	Hopkins County	Houston County
	Hudspeth County	Jasper County [GO Zone]	Jim Hogg County	Jim Wells County
	Karnes County	Kenedy County	Kent County	Kerr County
	Kimble County	Kinney County	Kleberg County	Knox County
	Lamar County	Lamb County	La Salle County	Leon County
	Limestone County	Llano County	Lynn County	McCulloch County
	Madison County	Marion County	Martin County	Maverick County
	Menard County	Mills County	Mitchell County	Montague County
	Morris County	Motley County	Nacogdoches County [GO Zone]	Navarro County
	Newton County [GO Zone]	Nolan County	Palo Pinto County	Parmer County
	Pecos County	Polk County [GO Zone]	Presidio County	Real County
	Red River County	Reeves County	Refugio County	Runnels County
	Sabine County [GO Zone]	San Augustine County [GO Zone]	San Saba County	Shelby County [GO Zone]
	Starr County	Stephens County	Stonewall County	Swisher County
	Terrell County	Terry County	Throckmorton County	Titus County
	Trinity County [GO Zone]	Tyler County [GO Zone]	Uvalde County	Val Verde County
	Walker County [GO Zone]	Washington County	Willacy County	Winkler County
	Zapata County	Zavala County		
Utah	Wasatch County			
Vermont	Addison County	Bennington County	Windham County	
Virginia	Northampton County	Westmoreland County		
Washington	Clallam County	Jefferson County	Lewis County	Mason County
	San Juan County			
West Virginia	Calhoun County	Doddridge County	Grant County	Pendleton County
	Roane County	Taylor County		
Wyoming	Teton County			
American Samoa	Eastern District	Manu'a District	Swains Island	Western District
Guam	Guam			
Northern Mariana Islands	Northern Islands Municipality	Rota Municipality	Saipan Municipality	Tinian Municipality
Puerto Rico	Adjuntas Municipio	Coamo Municipio	Culebra Municipio	Jayuya Municipio
	Las Marias Municipio	Maricao Municipio	Salinas Municipio	Santa Isabel Municipio
	Utuado Municipio	Vieques Municipio		
Virgin Islands	St. Croix	St. John	St. Thomas	

Nonmetropolitan DDAs labeled "[GO Zone]" are designated under the Gulf Opportunity Zone Act of 2005. Their populations do not count against the 20 percent population cap on nonmetropolitan areas designated DDAs by reason of high land, construction, and utility costs relative to area median gross income.

[FR Doc. E8–20322 Filed 9–2–08; 8:45 am]

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